

B) Summary of Telephonic Interview:

Applicant wishes to thank Examiner Mahafkey and Primary Examiner Tran for their time during the telephonic interview conducted on November 6, 2008. Examiner Tran suggested reconsideration of the rejection on some of the points raised by Applicant. Applicant requested withdrawal of the Office action and a new non-final Office action be issued.

- I. With regard to the Forkner reference and the rejection of claim 38, Applicant pointed out during the interview that:
 - a. Applicant has a claimed continuous process and Forkner meets none of the steps claimed by Applicant. Applicant indicated that it is not obvious to introduce a continuous process into the method of Forkner because Forkner is concerned only with batch processing. The Examiner states that continuous processes are well-known. There are specific details in Applicant's claims that Forkner fails to teach.
 - b. Forkner does not teach continuous condiment sheets from continuous molding processes.
 - c. Forkner does not teach dividing continuous condiment sheets into continuous condiment strips
 - d. Forkner does not teach mating said continuous condiment strips.
 - e. Forkner does not teach feeding the mated continuous condiment strips to a heating/fusion device to heat the mated surfaces of the continuous condiment strips to their flow point
 - f. Forkner does not teach abutting the heated mated surfaces of the continuous condiment strips to cause fusion of the surfaces and form a continuous fused combination condiment sheet. (note a condiment sheet is formed that combines different condiment strips from different continuous condiment webs). Forkner only teaches forming identical wafers.
 - g. Forkner does not teach dividing continuous fused combination condiment strip sheet to form condiment slices.

II. With regard to the Forkner reference and the rejection of claims 46, 48, and 49, Applicant pointed out during the interview that:

- a. Forkner does not teach removing a condiment slice from a condiment sheet using a cutting tool.
- b. Forkner does not teach mating the cutting tool with a mold section.
- c. Forkner does not teach positioning the condiment slice in the mold section.
- d. Forkner does not teach said cutting tool and said mold section are provided with heating/cooling plates for performing heating of the periphery of said condiment slice in the mold section.
- e. Forkner does not teach that the condiment slice has a plurality of layers.

III. With regard to the rejection of claim 40 over Bogdan in view of Luck, Applicant pointed out during the interview that:

- a. Neither Bogdan nor Luck teaches extruding continuous condiment sections from a plurality of extrusion nozzles.
- b. Neither Bogdan nor Luck teaches abutting longitudinal surfaces of the plurality of continuous condiment sections and fusing the abutting longitudinal surfaces along their longitudinal axes to form a condiment loaf.
- c. Neither Bogdan nor Luck teaches feeding a continuous condiment loaf to a cutting station.
- d. Neither Bogdan nor Luck teaches dividing a continuous fused combination condiment loaf to form condiment slices.

The Examiner noted that Bogdan was being modified by Luck because Luck teaches extrusion as an art recognized equivalent. Applicant indicated that modification cannot completely replace or destroy the teachings and inventive process of the primary reference.

IV. With regard to the rejection of claim 35 over Bogdan, Applicant pointed out during the interview that:

- a. Bogdan does not teach a mold having two compartments – an upper compartment into which condiment is deposited and a lower compartment into which condiment is deposited such that the condiment in the upper compartment contacting the condiment in the lower compartment forms a partial face fusion.

The Examiner pointed to Figure 6. Applicant, however, indicated this was packaging and not a mold and further does not have upper or lower mold compartments. Examiner Mahafkey and Primary Examiner Tran indicated they would revisit this rejection.

V. With regard to the rejection of claim 22, 42, 43, and 44, Applicant pointed out during the interview that:

- a. Alden does not teach the method and does not teach interweaving strips/strands of at least one food condiment to form a condiment structure.
- b. Alden does not teach cutting.
- c. Alden does not teach performing single successive cutting steps on the woven condiment sheet to form woven condiment slices.
- d. Alden does not teach single successive cutting steps performed on a woven condiment sheet to form woven condiment slices, as described in claim 43, causing woven peripheral edge portions of said woven condiment slice to bond together to retain the woven form.
- e. Alden does not teach performing a single cutting operation on a woven condiment sheet to simultaneously form a plurality of woven condiment slices, as described in claim 44, causing woven peripheral edge portions of each of the plurality said woven condiment slices to bond together to retain the woven form.

The Examiner stated that the distribution of the condiments on the pizza constitutes weaving and the definition for weaving relied on by the Examiner is "combining various elements as a whole." Applicant stated that the definition does

incorporate and the specific weaving method claimed and taught by Applicant. Applicant stated that interweaving strips/strands has a specific meaning and does include random distribution of food onto pizza. Applicant indicated that Alden is non-analogous art and not pertinent to the inventive matter which the inventor is concerned.

C) Request for Withdrawal of Finality:

I. Basis of rejection improper

Applicant respectfully requests that the Final Office action of July 9, 2008 be withdrawn and a new non-final Office Action be issued to afford Applicant a fair opportunity to respond to a proper rejection, because many of the claims have been improperly rejected under 102(b) and 103(a) as was set forth in the arguments in Applicant's previous response and the arguments presented hereafter. Applicant has not amended the claims in the instant application.

II. Request for supporting references

Applicant respectfully requests that the Examiner's Office action of July 9, 2008 be withdrawn and a new non-final Office Action be issued because the Examiner did not grant the Applicant's timely request for documentary evidence to support the Examiner's numerous well-known and obvious statements with respect to the claims.

Specifically, the Examiner made well-known, ordinary ingenuity, and common sense statements in the first Office Action mailed September 26, 2007. In Applicant's response filed January 24, 2008, Applicant requested supporting references providing documentary evidence for the well-known and obvious assertions made by the Examiner. That request was not addressed. Applicant continues to traverse the Examiner's well-known and obvious assertions and continues to request that the Examiner provide documentary evidence supporting the alleged well-known and obvious statements. The Examiner to date has not addressed Applicant's requests.

D) Response to Examiner's Arguments:

At page 4, lines 1-16, regarding claim 24, which depends from claim 23, the Examiner states: “Applicant argues repeatedly that the limitations of “the condiment sheet comprising a single condiment sheet, a face-fused condiment sheet, a side fused condiment sheet, a face fused side fused condiment sheet, a chopped condiment sheet, a woven condiment sheet, and combination’s thereof was not addressed in the office action... the Examiner believed that it was clear from the office action that when the method of making the sheets was discussed, it would be common sense what type of sheet was formed as would inherently result from the method... Thus, it would be obvious that a fused condiment sheet would be formed. The only options for fusing the sheet would be a face fuse, side fuse, or side face fuse. Thus, it would be obvious that the teachings of the reference as cited in the office action teach the claimed limitations...” In response, the Examiner is referring the rejection of claims 21, 23-27, 30, and 36 over Forkner under 35 USC 102(b). It is noted that the Examiner states that “the only options for fusing the sheet would be a face fuse, side fuse, or side face fuse.” Applicant submits that the “options” were discovered in Applicant’s own disclosure and instant claim limitations and not from the teachings of Forkner. These are no teachings in Forkner of “options” of face-fused, side-fused, or side-fused-face-fused condiment sheets. Why does it appear that the “options” asserted by the Examiner to be present in Forkner are limited by Applicant’s claims? The Examiner’s assertion of ingenuity and common sense is not based on any evidence in the record. The Examiner still has not indicated what condiment sheet is taught by Forkner.

At page 4, line 22 through page 5, line 2, the Examiner states, “Applicant argues repeatedly that the reference of record teach of strips and wafers, not sheets.” The Examiner refers to the teachings at column 3, lines 56-60, of the Forkner reference to teach claim 23 and refers to “slices” (wafers) cut from a sheet. Such “slices” (wafers) can be used in the pack of “slices” (wafers), as shown in Figure 3. The Examiner then rejects claim 24 by referring to these same “slices” (wafers) as “sheets” – only because Applicant’s claim 24 recites a limitation of “*mating a plurality of condiment sheets together to form a condiment sheet structure.*” It is inappropriate for the Examiner to change the definition of an element made in the rejection of an independent claim to a different definition for the element in its dependent claim. Note that Forkner, the reference relied on by the Examiner, maintains consistency of the terms “sheet” and “wafer” to have different meanings throughout the reference. The Examiner should maintain the same consistency.

If the Examiner intends to reject Applicant’s claims 23 and 24 by referring to the wafers formed by Forkner as “sheets” then claim 23 cannot be rejected over Forkner because claim 23

requires a dividing step that distinguishes a “sheet” from a “wafer.” Even the Examiner has recognized that Forkner cuts “wafers” from “sheets.”

If the Examiner intends to reject Applicant’s claims 23 and 24 by referring to the wafers formed by Forkner as “slices” then claim 24 cannot be rejected over Forkner because Applicant’s claim 24 requires a step of “mating a plurality of condiment sheets together.”

Further, regarding claim 24, which depends from claim 23, Applicant’s claim 24 states: *“wherein said step of providing at least one condiment sheet comprises mating a plurality of condiment sheets together to form a condiment sheet structure.”* In the combination of claims 23 and 24, note that prior to the dividing step in claim 23, that a plurality of “condiment sheets” are mated together. Then, step b) of claim 23 provides a dividing step to divide the plurality of mated condiment sheets to form condiment slices. Claims 23 and 24 start with sheets and divide the sheets to form slices. Forkner does not disclose this. The Examiner appears to be relying on the teaching of Figures 3-6 of Forkner. However, based on the teaching of Forkner, the stack of wafers 12a shown in Figure 6 are no different after the separating step as they were when in the stack. That is the wafers, which the Examiner defines as “sheets,” are identical before and after the separating step and, therefore, remain “sheets” (as defined by the Examiner). Applicant specifically claims in step b) of claim 23, in conjunction with claim 24, diving the plurality of mated condiment “sheets” to form individual condiment “slices.” The use of the limitation “slices” is intended to impart an end product distinctly different from the product prior to the dividing step. This is the reason Applicant has emphasized the distinction between “sheets” and “slices” and “strips/strands – because each has specific meaning. The meaning is clear from Applicant’s specification. Note that Forkner does not teach a dividing step as claimed by Applicant. What Forkner does is break off one wafer from a stack of wafers. This action does not change the wafer. Even Forkner recognizes this because Forkner continues to refer to the separated entity as a “wafer.”

At page 5, lines 5-6, of the Office action, the Examiner argues, with respect to claim 30, *“Durst discusses the taste of the condiment sheets, and thus Durst inherently teaches that the condiment pieces are removed from the mold.”* In response, merely removing a piece of food condiment from a mold for test tasting does not qualify as meeting applicant’s claim limitation. Again, Applicant’s claim specifically recites removing the condiment from the mold. The Durst reference does not recite this limitation. Further, many food products and the mold itself are sliced while still in the mold or casing. It cannot be assumed to be inherent that the frozen product in Durst is removed from the mold. Durst does not indicate that any product is removed from a mold. Merely dismissing a claim limitation as inherent to meet the limitation is improper.

At page 5, lines 9-14, the Examiner indicates, “...it is noted that the features upon which applicant relies (i.e., removing a frozen product from a mold prior to slicing) are not recited in the rejected claims.” It is unclear from this statement to what the Examiner is referring. In response, Claim 30 clearly recites, “***removing said condiment structure from said mold.***” It appears the Examiner has mistaken the teachings in the Durst reference with Applicant’s claim. Applicant is arguing that Durst does not remove the frozen product from the mold.

With respect to claims 26 and 27, the Examiner states in the Office action at page 5, line 19, through page 6, line 11, that “Forkner teaches that two condiment sheets can be bound together with another condiment sheet as a bonding layer (Column 4, lines 26-50 and Figure 5)...” In response, the teaching of Forkner does not address Applicant’s claim limitations. Specifically, as stated by Applicant in the original response, Forkner fails to teach the combination of claims 23 and 24. Claim 24 depends from step a) of claim 23. The combination of claims 23 and 24 require: A method of forming individual condiment slices; mating a plurality of condiment sheets together; then dividing the plurality to form condiment slices. Forkner does not have a dividing step following the mating step referred to by the Examiner. Applicant argues the term “sheets” and “slices” are different because each term has a meaning. That is, something different is produced following the mating and dividing steps. Forkner simply does not teach the dividing step. Forkner must first have a plurality of condiment sheets (see discussion above with respect to claims 23 and 24).

The Examiner states in the Office action at page 5, line 19, through page 6, line 11, that “Forkner teaches that two condiment sheets can be bound together with another condiment sheet as a bonding layer (Column 4, lines 26-50 and Figure 5)...” In response, Forkner does not refer to the “wafers” as “sheets.” Forkner provides clear distinction between “sheet” and “wafer.” There is no teaching of two condiment sheets bound together with another condiment sheet as a bonding layer. If the Examiner insists on referring to the wafers as sheets, then claim 23, from which claim 26 depends, cannot be rejected over Forkner. The teachings of Forkner do not address Applicant’s claim limitations. Specifically, as stated by Applicant in the original response, Forkner fails to teach the combination of claims 23, 24 and 25. Claim 24 depends from step a) of claim 23. The combination of claims 23 and 24 require: A method of forming individual condiment slices by mating a plurality of condiment sheets together; then dividing the plurality to form the condiment slices. Forkner does not have a dividing step following the mating step to form slices. Applicant argues the terms “sheets” and “slices” are different because each term has and provides a particular meaning in Applicant’s method for forming

condiment slices. That is, something different is produced following the mating and dividing steps.

At page 7, lines 4-10, with respect to claim 22, the Examiner argues that Alden teaches weaving at column 3, lines 15-16 and column 3, line 67 through column 4, line 51. In response, Applicant maintains the position that interweaving is not taught or suggested by Alden. It is further noted that claim 22 is a method of forming a condiment structure that comprises providing individual strips and/or strands of said at least one condiment to form said condiment structure. The Examiner argues, “interweaving is defined as to become woven together, interlaced, or intermingled, thus Alden teaches of interweaving as the term is defined.” In response, the Alden reference fails to use any of the terms cited in the Examiner’s definition. Accordingly, there is no passage in Alden on which to base the Examiner’s definition. The Examiner also states, “Applicant further argues that Alden teaches of intermingling which is not interweaving.” For the record, Applicant has never presented any such statement. In fact, Applicant has consistently argued that Alden does not use any of the terms claimed by Applicant and Applicant has consistently argued that the terms “intermingling” and “interweaving” are not equal and not recited in Alden. Applicant hereby requests that the Examiner provide a definition showing that “interweaving” is equivalent to “intermingling” in the context of Applicant’s disclosure. Applicant further requests that the Examiner provide a definition showing that “weaving” is equivalent to “intermingling” in the context of Applicant’s disclosure. It is further noted that Applicant’s claim recites, “the interweaving of said individual food condiment strips and/or strands form said food condiment structure.” There is no method in Alden that uses interweaving of food condiment strips and/or strands to form a condiment structure.

The Examiner argues at page 7, lines 16-18, regarding claim 22, that “there are no structural limitations to define a strip or a strand and Alden teaches of cutting pepperoni logs and whole vegetables into pieces...” In response, Alden does not teach interweaving strips and/or strands as claimed.

At Page 7, lines 19-23, the Examiner states “Applicant argues that the desired size of the condiment has nothing to do with how a condiment piece is cut. It is unclear as to how Applicant’s argument makes common sense and as to how the two cannot be connected. Applicant’s argument is not convincing as the desired size of a food directly dictates the manner in which the food is cut, or even if it is cut at all.” In response, the Examiner is directed to Applicant’s disclosure and instant claims, which teach different inventive methods for

cutting food condiment sheets. According to the Examiner's position and above statements, Applicant's inventive methods would not be within the "norm or common sense" for cutting food condiment sheets. Therefore, Applicant's claims are unique and non-obvious methods for molding and cutting condiment sheets because the size of the condiment sheet in Applicant's invention does not dictate the manner in which the condiment sheet is cut. However, the Examiner repeatedly rejects the cutting methods as being obvious. The Examiner's assertion of ingenuity and common sense is not based on any evidence in the record.

At Page 7, lines 24-29, the Examiner states with regard to claim 34, "Applicant argues that there is no motivation to provide a cutting tool for the condiment piece as taught by Durst since Durst teaches shaping by molding. Applicant's argument is not convincing as Durst teaches of cutting the molded condiment piece into smaller pieces, and thus some type of cutting device would be required to complete the process of forming a condiment section as taught by Durst (see Example 5.)" In response, the Examiner has not addressed Applicant's argument. Applicant's claim limitation recites: "said dividing step is performed using a cutting tool comprising at least one cutting blade and at least one shaping surface." The Examiner has not addressed Applicant's argument as to why it would have been obvious to use a cutting tool comprising at least one cutting blade and at least one shaping surface to slice a frozen admixture.

At Page 7, line 29 through Page 8, line 2, the Examiner states, with response to claim 30, "... Applicant argues that the condiment as taught by Durst must be cut within a mold, it is unclear as to where Applicant found the teaching in Durst." The Examiner further states, "it is unclear as to why the condiment pieces could not be cut while in the mold." In response, the Examiner rejected claim 30 under 102(b) as being anticipated by Durst. In reply to the Examiner's rejection, Applicant never made the statement that "the condiment as taught by Durst must be cut within a mold." The Examiner is requested to reread Applicant's response to the rejection of claim 30. Applicant argued that, "method step d) removing said condiment from said mold" is not taught or met by Durst, and cannot be assumed to be present. With regard to the Examiner's statement "... it is unclear as to why the condiment pieces could not be cut while in the mold." Applicant's argument for claim 30 is that Durst does not teach removing the condiment structure from the mold (see Applicant's response to the Examiner's rejection of claim 30 over Durst). Accordingly, it is unclear to both the Examiner and Applicant as to where the cutting step occurs. The Examiner's statement "... it is unclear as to why the condiment pieces could not be cut while in the mold." is an admission by the Examiner that there is no teaching that the Durst frozen mixture is removed from the mold. The

Examiner specifically states that the condiment could be cut in the mold. In fact, Durst never discloses removing the frozen mixture from the mold. Accordingly, there is an absence of a teaching in Durst of removing the frozen mixture from the mold. In the absence of a teaching, one can conclude, as the Examiner and Applicant have, that the slicing of the frozen mixture could be performed while in the mold. Again, claim 30 should not have been rejected over Durst under 102(b). Thus, it is not inherent that the product is removed from the mold. Again, the rejection of claim 30 should be withdrawn and a new non-final Office action issued.

At Page 8, lines 3-22, the Examiner argues the obvious statement presented to reject Applicant's claim 38. The Examiner indicates that Forkner teaches the steps of Applicant's claim 38 at column 3, lines 37-49. Additionally, the Examiner states, "Forkner teaches of the claimed method and the obviousness statement for using a continuous process meet the claimed limitations." In response, Applicant requested a reference that supports the well-known obvious statement asserted by the Examiner (see page 33 of Applicant's response of January 24, 2008). The Examiner has not provided a reference and still maintains that it would have been obvious for Forkner to use a continuous process rather than the batch processing taught in the Forkner reference. In response, the Forkner reference does not teach or suggest a continuous process, and the batch process of Forkner does not lend itself to a continuous process, as asserted by the Examiner. As Applicant has previously argued, all of the steps of claim 38 require "**continuous condiment sheets**" or "**continuous condiment strips**" or "**continuous fused combination condiment sheets**." Continuous sheets or webs of condiment are not disclosed in the teachings of Forkner. The Examiner cannot simply disregard Applicant's claimed elements. The claimed method limitations of Applicant's claim 38 do not in any way resemble the method disclosed by Forkner. In fact, Forkner teaches none of the steps of Applicant's claim 38. Additionally, there are two dividing steps in claim 38. The first forms condiment "strips." The second forms "slices." Again, note that Forkner uses one cutting operation on sheets to form wafers – which remain as wafers through the remainder of processing. The Forkner reference has been misrepresented by the Examiner to demonstrate an obvious teaching of Applicant's claimed method. One cannot suggest that any batch process can automatically be made continuous. Forkner must provide one of ordinary skill in the art the motivation to make the proposed modification. The Examiner's proposed modification would require substantial reconstruction and redesign of the elements shown in the Forkner process as well as a change in the basic principles under which the Forkner process was designed to operate. A proposed modification cannot render the prior art unsatisfactory for its intended purpose or change the principle of operation of a reference or make the prior art inoperable.

At Page 8, lines 23-30, the Examiner argues with respect to Applicant's claim 46, "Forkner teaches that the molded condiment pieces can be removed from the mold attached to one another and pulled apart (Example 1) and...one would have been motivated to use a cutting device to assist with separating the condiment pieces." This response by the Examiner is in response to Applicant's argument that Forkner does not teach providing a cutting tool to "form" and "remove" a condiment slice from at least one condiment sheet. Note from Applicant's claim that the cutting tool is used to cut the condiment sheet to "form" a condiment slice and the tool "removes" the condiment slice from the sheet. The Forkner reference does not teach a cutting tool used to "form" and "remove" a food condiment slice. The Examiner's argument does not address the limitations of claim 46. The Examiner is arguing that it would have been obvious to have used a cutting tool in Forkner to remove a wafer 12 from the stack shown in Figure 6. The wafers in Forkner, to which the Examiner is referring, have already been formed and packaged. Addition of a cutting tool would not "form" a condiment slice. Additionally, the Examiner is directed to column 5, lines 1-7, where Forkner recites "*Referring again to FIG.6, the expanded wafers 12a are shown in a compact group with adjacent wafers lightly bonded together. One end wafer is shown after it has been manually separated from the stack. The adhesion between the wafers is such that an individual wafer can be readily manually removed by breaking the light bond between the wafer and the next wafer of the group.*" At column 8, lines 41-43, Forkner discloses, "...individual wafers could be readily broken away by applying manual force..." Accordingly, there is no discussion, requirement, or motivation for using a cutting tool to separate wafers. Again, Forkner does not meet the claimed limitations. Note, again, that the steps in Applicant's claim are to provide a cutting tool for "forming" a condiment slice by cutting a condiment sheet. The premise of the Examiner's argument is providing a cutting tool after the wafers are formed and packaged. Again, there is no motivation to even provide a cutting tool in Forkner in this process step. Further, the Examiner has not addressed how the Forkner reference meets the limitation "*mating the cutting tool with a mold section; positioning said condiment slice in said mold section; heating the periphery of said condiment slice.*" Again, the Examiner has argued the use of a cutting device to separate the stack of wafers as shown in Figure 6 of the Forkner reference. The Examiner has not explained how a cutting device – used to separate a finished product – is used in the remainder of the claim limitations. The Examiner's rejection and arguments simply do not make sense. The Examiner states at page 8, lines 28-30, "furthermore, it was known to cut slices in molding devices and a molding device is not motivation not to cut a piece of material from the molded material." The Examiner is again requested to support the well-known assertion and provide a reference.

The Examiner originally rejected claim 46 over Forkner by stating on page 6 of the first Office action, “Forkner teaches a process for forming condiment slices... however is silent to the method of... mating the cutting tool with the mold section as recited in claim 46.” The Examiner then states: “It was known in the art at the time the invention was made for cutting or slice tools to be combined with molding apparatus, including those utilized with edible extruded materials. Forkner teaches that condiments strips may be formed by extruding and then cutting the extruded condiment strips to form the desired size. It would have been obvious... to include a mold with the cutting device in order to assist in easily forming or cutting the extruded condiment piece to the desired size.” Applicant responded by arguing that the Forkner reference does not teach extruding and does not teach cutting extruded condiment strips. Additionally, the Examiner did not address what the Examiner said was the “difference” between Applicant’s claim and the Forkner reference which is “mating the cutting tool with the mold section” – which is step d) of claim 46. In fact, steps c) through f) are not taught or suggested by Forkner. The Examiner has not addressed these limitations. In response to Applicant’s arguments, the Examiner responded in the Final Office action by stating “Applicant’s argument is not convincing as Forkner teaches that the molded condiment pieces can be removed from the mold attached to one another and pulled apart (Example 1) and... one would have been motivated to use a cutting device to assist with separating the condiment pieces.” In response, this is a completely different basis of rejection than that presented in the first Office action. It is improper for the Examiner to change the premise of a rejection – Applicant did not amend the claims. It is noted that the basis of the most recent arguments by the Examiner in supporting the rejection of claim 46 is as equally unreasonable as the reasons presented by the Examiner in the previous Office action. The Examiner should maintain a consistent basis of rejection. It is noted that Example 1 cited by the Examiner’s current rejection teaches none of the steps of claim 46. Further, the Examiner still has not addressed the differences that the Examiner proposed.

The Examiner has not addressed Applicant’s arguments with respect to claims 48 and 49.

At page 9, lines 7-8, the Examiner states with respect to claim 52, “Applicant argues that no where in the rejection is an obvious statement regarding the use of a hopper apparatus. Applicant is again referred to the office action, page 7.” In response, Applicant maintains that the Examiner has not specifically stated why it would have been obvious to use a hopper in Forkner. Additionally, the Examiner has not provided a reference, which was requested by Applicant, that supports the alleged well-known statement.

At page 9, lines 9-12, with respect to claims 53 and 54, the Examiner states that, *"Applicant's argument is not convincing as the Office action states motivation for making a continuous conveyed process and it would be inherent that the mold be below the mold injection nozzle."* In response, this statement represents a new ground of rejection. This statement by the Examiner was not presented in the previous Office action. Applicant has not amended the claims. The Examiner's first Office action did not provide any statement of motivation for making a mold conveyed beneath said ejection nozzle. No inherency statement that "*the mold is inherently below the mold injection nozzle*" was presented. In fact, it is unclear to Applicant how a continuous conveyed process and ejection nozzle, stated by the Examiner to be obvious in Forkner and not taught by the reference, could "inherently" have a mold "below" the ejection nozzle. Accordingly, the Examiner is modifying a previous modification to address a deficiency of the rejection in the first Office action. For the Examiner to now state that "*it would be inherent that the mold be below the mold injection nozzle*" is an admission on the record that the first Office action of did not address the claim limitations. All words and limitations in a claim must be considered in judging the patentability of a claim. Applicant's claimed invention must be considered as a whole and not dissected into discreet elements and analyzed. A new ground of rejection after final does not afford the Applicant the ability to respond to the rejection. The Forkner reference has been misrepresented by the Examiner to demonstrate an obvious teaching of Applicant's claimed method. Further, one cannot suggest that any batch process can automatically be made continuous. There is no support or explanation for the Examiner's conclusion. The Examiner must provide Explanation as to why Forkner would use a continuous process. Why would Forkner provide a mold for conveying? Why would Forkner provide a mold inherently below an ejection nozzle? Why would Forkner provide an ejection nozzle? None of these limitations are described or suggested by Forkner. What would lead one of ordinary skill to entirely modify Forkner? The prior art must provide one of ordinary skill in the art the motivation to make the proposed modifications needed to arrive at Applicant's claimed invention. There must be a suggestion or motivation of desirability in the reference to make the proposed modification. The Examiner cannot merely state that it is obvious and well known to modify a reference without just and sound reasoning. Relying on the Examiner's proposed modifications to Forkner would require substantial reconstruction and redesign of the elements shown in the Forkner process as well as a change in the basic principles under which the Forkner process was designed to operate. Further, a proposed modification cannot render the prior art unsatisfactory for its intended purpose or change the principle of operation taught by a reference or make the prior art inoperable. Additionally, the Examiner has not provided a reference that supports the well-known statements, as was requested by Applicant. Accordingly, the Office action should be

withdrawn and a new non-final Office action addressing all of the claim limitations is hereby requested.

The Examiner has not addressed Applicant's arguments with respect to claim 55.

At page 9, lines 13-21, the Examiner argues, with respect to claim 56, that extruding is taught by Forkner and states, “...Applicant is referred to Forkner, column 3 lines 50-60, as cited in the office action, which teaches of extrusion, i.e. the act of shaping through a die.” In response, the passage in Forkner does not teach or refer to an extrusion process or shaping through a die. The passage refers to a die-forming roll – which is not extrusion. Accordingly, the Examiner has misrepresented the teachings of Forkner and is requested to withdraw this rejection.

At page 9, lines 22-27, the Examiner states with regard to claim 56; “...the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of a primary reference ... rather, the test is what the combined teachings of the reference would have suggested to one of ordinary skill in the art...” In response, the Examiner’s point is unclear. To this point, the Examiner has only relied on one reference, Forkner, and supplemented that one reference with numerous well-known statements. Applicant has challenged the well-known obvious statements by requesting that the Examiner provide references to support the statements. The Examiner has not responded to this request.

At page 9, line 28, through page 10, line 3, the Examiner states, with respect to claims 53-54; “Applicant argues that the statement that injection nozzles where known in confections... is not applicable to the present invention.” Applicant’s argument has been that the Examiner has not presented art that teaches the process claimed by Applicant. Forkner does not teach a continuous molding process, nor the components claimed in the continuous molding process. The Examiner also modifies Forkner with numerous well-known statements in an attempt to meet Applicant’s claimed invention. For example, the Examiner is creating continuous webs of food condiment that do not exist, are not suggested, and would not have been obvious, in the Forkner reference. The Examiner cannot simply state that continuous processes, ejection nozzles, and hoppers are well-known. All words and limitations in a claim must be considered in judging the patentability of a claim. Applicant’s claimed invention must be considered as a whole and not dissected into discreet elements and analyzed in isolation. The Forkner reference has been misrepresented by the Examiner to demonstrate an obvious teaching of Applicant’s claimed method. One cannot suggest that any batch process can automatically be made continuous. There is no support or explanation for the Examiner’s conclusion. The prior art must

provide one of ordinary skill in the art the motivation to make the proposed modification needed to arrive at Applicant's claimed invention. There must be a suggestion or motivation of desirability in the reference to make the proposed modification. The Examiner cannot merely state that it is obvious and well known to modify a reference without just and sound reasoning. Relying on the Examiner's proposed modifications to Forkner would require substantial reconstruction and redesign of the elements shown in the Forkner process as well as a change in the basic principles under which the Forkner process was designed to operate. A proposed modification cannot render the prior art unsatisfactory for its intended purpose or change the principle of operation taught by a reference or make the prior art inoperable. Additionally, the Examiner has not provided a reference that supports the well-known statements, as was requested by Applicant. Accordingly, the Office action should be withdrawn and a new non-final Office action addressing all of the claim limitations is hereby requested.

The Examiner has not responded to Applicant's arguments with respect to the rejection of claim 47 of Forkner in view of Jordan.

On page 10, lines 3-7, the Examiner responds to Applicant's argument of rejection of claims 53-54 over Bogdan. Specifically, the Examiner argues "Applicant's argument is not convincing... continuous processes were known and it would have been obvious to use an injection apparatus in order to have a continuous process which was more efficient." It is believed that the Examiner intended "ejection" rather than "injection." In response, an ejection apparatus cannot provide a continuous process in Bogdan, because there is no continuous process in Bogdan to begin with. How would adding an ejection or nozzle apparatus make it continuous? How would adding an ejection or nozzle apparatus make it more efficient? The Examiner continues to modify batch processing by stating it is obvious to make the process continuous and then modifying the modification by stating it is obvious to include ejection nozzles to make the continuous process more efficient. An ejection apparatus does not define or provide a "continuous process" as asserted by the Examiner. Further, the Examiner has disregarded the "hopper" limitation in both Office actions. The Examiner has disregarded the "condiment pieces" limitation in both Office actions. The Examiner has disregarded "said mold is conveyed beneath said ejection nozzle" limitation in both Office actions. All words and limitations in a claim must be considered in judging the patentability of a claim. Applicant's claimed invention must be considered as a whole and not dissected into discreet elements and analyzed. One cannot suggest that any batch process can automatically be made continuous. There is no support or explanation for the Examiner's conclusions. The prior art must provide one of ordinary skill in the art the motivation to make the proposed modification needed to arrive at Applicant's claimed

invention. There must be a suggestion or motivation of desirability in the reference to make the proposed modification. The Examiner cannot merely state that it is obvious and well known to modify a reference without just and sound reasoning. Relying on the Examiner's proposed modifications to Bogdan would require substantial reconstruction and redesign of the elements shown in the Bogdan process as well as a change in the basic principles under which the Bogdan process was designed to operate. A proposed modification cannot render the prior art unsatisfactory for its intended purpose or change the principle of operation taught by a reference or make the prior art inoperable. The Examiner's practice has been to reject Applicant's claim limitations by dismissing the limitations through obvious and well-known statements. Applicant has repeatedly requested that the Examiner provide references to support the well-known statements, but the Examiner has not responded to the request.

The Examiner has not responded to Applicant's arguments with respect to the rejection of claim 55.

At page 10, lines 8-10, the Examiner states, with respect to claim 40, "Applicant argues Bogdan does not teach the claimed steps as recited in claim 40. Applicant is reminded that the rejection was made over a combination of references, i.e. over Bogdan and Luck, not over Bogdan alone." In response, Applicant clearly presented arguments over Bogdan in view of Luck in the response of January 24, 2008. The Examiner is encouraged to reread Applicant's arguments presented January 24, 2008. It is further noted that claim 40 is an independent claim. The rejection presented by the Examiner substantially states that Bogdan teaches no limitations of Applicant's claim and Luck is being used to modify Bogdan. It appears the Examiner is modifying the entire Bogdan reference. The rejection is confusing and unclear. Neither reference teaches a continuous process. Neither reference teaches extruding a plurality of condiment sections from a plurality of extrusion nozzles. Neither reference teaches abutting the longitudinal surfaces of the plurality of continuous extruded condiment sections and fusing the abutting longitudinal surfaces along their longitudinal axes to form a condiment loaf. Neither Bogdan nor Luck teaches dividing a continuous fused combination condiment loaf to form condiment slices. Neither reference has any of the basic steps.

At page 10, lines 11-15, the Examiner states, with respect to claim 40, "Applicant argues that Luck never recites the terms "strip" and "condiment structure", but instead discusses a sauce. As stated above, Applicant is reminded that the reference and the rejection need not contain identical language to the claim language to teach the claimed limitations..." In response, the Examiner is charged with and is responsible for accurately reporting the facts of what a

reference teaches – not substituting words and phrases for what the Examiner desires the reference to disclose. The Examiner states: “Luck teaches a sauce which is a slice frozen in form is a teaching of a strip condiment structure.” In response, Applicant cannot locate this statement in the Luck reference. Further, Applicant cannot locate any freezing step recitations in the Luck reference.

At page 10, lines 16-23, the Examiner states, with respect to claim 40, “Applicant argues that since Bogdan and Luck teach...a batch process...one would not have been motivated to use a continuous embodiment.” In response, the prior art must provide one of ordinary skill in the art the motivation to make the proposed modification needed to arrive at Applicant’s claimed invention. There must be a suggestion or motivation of desirability in the reference(s) to make the proposed modification. The Examiner cannot merely state that it is obvious and well known to modify a reference without just and sound reasoning. A continuous process is not taught or suggested by either reference cited by the Examiner. There is no enabling methodology discussed in the references. Further, Applicant’s claimed method steps of claim 40 are not met or disclosed by either reference. It is unclear to Applicant what Bogdan would do with an extruded product. Luck extrudes a sauce bar to avoid reheating – the method of Bogdan heats to liquefy the material to be poured into the mold so that it takes the shape of the mold. Bogdan’s method teaches away from the extruding benefit – not reheating – as discussed by Luck. Why would the Examiner extrude a sauce bar only to reheat it in the mold of Bogdan? Applicant’s claim forms a food condiment loaf having a plurality of food condiment sections. Applicant’s extruded loaf is sliced into condiment slices. How does the Bogdan mold play a role in Applicant’s claimed invention? Applicant’s continuous process is not taught by either reference. The references are not combinable. The Examiner has not explained why the combination of the teachings is proper. The rejection lacks specificity. The Examiner cannot automatically insist that every batch process is automatically continuous. The Bogdan and Luck references, alone or in combination, do not teach claim 40.

At page 10, lines 24-30, the Examiner states, with regard to claim 40, “Applicant argues that Bogdan and Luck teach of diverging packaging requirements and different types of food, and thus cannot be combined. First it is noted that there are no packaging requirements in the recited claim.” In response, the concepts of packaging requirements do not have to be recited in the claims to show that the references teach away from each other. The prior art must be considered in its entirety – including disclosures that suggest that the combination of references teach away from each other. The proposed modification of Bogdan in view of Luck cannot render the teachings of Bogdan unsatisfactory for their intended purpose or change the principle of operation

of the teachings of the reference. The Examiner suggests modifying Bogdan using a “finished” Luck product requiring permeable to air packaging. Bogdan’s teachings require the product be sealingly wrapped. Further, Applicant’s own specification teaches using hermetically sealed wrapping. Accordingly, luck teaches away from applicant’s invention. The proposed modification cannot change the principle of operation of a reference. There is no suggestion to combine Bogdan in view of Luck to arrive at Applicant’s claimed invention. One basic requirement for a case of obviousness is that the prior art references, when combined, must teach or suggest all of the claim limitations. The Examiner’s decision to maintain the rejection has not been based on the totality of evidence. The Examiner has not considered Applicant’s rebuttal.

At page 10, lines 26-30, the Examiner further states, with respect to claim 40, “furthermore, Applicant is reminded that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all references. Rather, it is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *in re Keller*...” In response, the policy of the Office is to follow Graham v. John Deere Co. in the consideration and determination of obviousness under 35 U.S.C. 103. The tenets require that Applicant’s claimed invention be considered as a whole and suggest the desirability of making the combination; that the references be viewed without benefit of hindsight afforded by the claimed invention; and reasonable expectation of success. The Examiner, with respect to Applicant’s claim 40, has met none of these tenets.

At page 11, lines 3-5, the Examiner states, with respect to claim 40, “Applicant argues that the claim limitation of “extruding a plurality of continuous condiment sections” was not addressed in the office action. Applicant is referred to pages 9-10 which address these limitations of claim 40.” In response, the passage at page 10 in the rejection to which the Examiner is referring states: “regarding fusing the surfaces together to form a condiment loaf to form condiment slices, Bogdan teaches that it is desirable to form condiment slices and then combine them together; Bogdan teaches, when desired, loafs of condiment including a loaf of jelly, peanut butter, and jelly is formed. It would have been obvious...to substitute one art recognized functional equivalent (i.e. extruding multiple strips) for another (i.e. molding multiple strips) in the process of forming a condiment strip as disclosed by bogdan...” In response, it remains unclear to Applicant how luck is modifying Bogdan – there is no mention of Luck in the obvious statement. There is no mention of extruding a plurality of condiment sections from a plurality of extrusion nozzles in the obvious statement. Is it the intention of the rejection to completely and entirely discard the equipment taught and used by Bogdan and replace it with

other equipment not disclosed or taught by either reference? Applicant is at a disadvantage because Applicant is unclear as to how the Examiner is forming and communicating a basis of rejection. The Examiner specifically stated in the rejection of claim 40 on page 9 of the Office action of 9/26/2007 that “Bogdan, however, is silent to a continuous method for forming condiment slices comprising: extruding a plurality of condiment sections from a plurality of extrusion nozzles, fusing the surfaces together to form a condiment loaf, and cutting the condiment loaf to form condiment slices as recited in claim 40.” However, on page 10 of the same Office action the Examiner states: “Regarding fusing the surfaces together to form a condiment loaf, and cutting the condiment loaf to form condiment slices... Bogdan teaches, when desired, loafs of condiment, including a loaf of jelly, peanut butter, and jelly is formed. It would have been obvious...to fuse the condiment loaf as taught by Bogdan...” Clearly the Examiner states that Bogdan does not teach the limitations and then states that Bogdan teaches the limitations in the obvious statement. Neither Bogdan nor Luck teaches, “extruding multiple strips” as asserted by the Examiner. Further, there is no mention of Luck in the obvious statement. Again, Applicant is confused as to what the Examiner’s intentions are with respect to the rejections. For the record, neither Bogdan nor Luck, together or separate, teaches the limitations of claim 40.

At page 11, lines 6-13, the Examiner states, regarding claim 40, “Applicant argues that Bogdan teaches of molding a liquid material which cannot be extruded and thus one would not have been motivated to extruded.” The Examiner then states: “Applicants argument is not convincing both molding and extrusion were well-known shaping techniques and it would be within the ordinary ingenuity of one of ordinary skill in the art to move from one method to another. To slightly modify the process and the molding composition would be routine and would not impart a particular distinction to the claims....” In response, stating that extrusion and molding are well-known is not motivation to completely change methods. Applicant takes issue with the Examiner’s statement that one can assign modifications made to a process as “routine” and make predetermined patentability judgments for an application for patent without first examining the application. The determination of patentability is made after considering the teachings of the prior art. What is the Examiner’s definition for “slight modifications”? It is not necessarily a “slight” modification to go from one molding process to a different molding process. Processes do not necessarily lend themselves to modification. The Examiner concludes that it is routine to slightly modify a process and molding composition and would not impart a patentable distinction to the claims. How does the Examiner know that only a “slight” modification of the composition would be needed? Such teachings must come from the prior art references. Such a suggestion is to state that Bogdan is not patentable over luck, and Luck is not

patentable over Bogdan. The Examiner has still not stated why a person of ordinary skill in the art would be motivated to introduce an unnecessary step of extrusion into the Bogdan process. The Examiner is required to support the well-known assertions and provide documentary evidence to support the well-known statements previously presented by the Examiner and requested by the Applicant. Additionally, the Examiner is requested to provide documentary evidence showing that it is within the ordinary ingenuity of one having ordinary skill in the art to move from one method to another and also show that slight modifications of the process and molding compositions taught by Bogdan would be routine. The new reasoning presented by the Examiner is a new basis for rejection not previously presented. Applicant has not amended the claims.

At page 11, lines 14-16, the Examiner states, regarding claim 40, “Applicant argues that Bogdan teaches of a combination of food slices but not a loaf of food slices.” Note that Applicant’s claim is not drawn to “a loaf of food slices.” The Examiner then states: “A loaf is defined as a shaped or molded food mass, thus it is unclear as to how the shaped or molded food slices as taught by Bogdan are not loaves.” The Examiner’s statement of rejection and position is unclear. First the Examiner indicates that Bogdan does not teach a loaf and then states that Bogdan does teach a loaf. Applicant is unclear on the Examiner’s position. The reason why the food slices of Bogdan are not loaves is because they are food slices. In any event, the condiment slice formed by Bogdan is singly formed in a mold and is not a loaf. The condiment slice removed from the Bogdan mold is the finished product and is reported by Bogdan to be sized to fit onto a slice of bread. The loaf of food condiment claimed by Applicant is continuous – not finite – and formed from a plurality of continuous fused extruded food condiment sections. The continuous extruded loaf is then divided by cutting the continuous extruded loaf of food condiment to form individual slices of food condiment. Bogdan has no cutting step – another reason why bogdan’s food slices are not loaves. Thus, it should be clear that the continuous food condiment loaf claimed by Applicant is much larger than the single food condiment slice described and singly formed by Bogdan. The Examiner is requested to explain why Bogdan would be motivated to introduce extruding and cutting steps.

At page 11, lines 17-21, the Examiner states, regarding claim 40, “Applicant argues that it would not have been obvious to introduce a cutting step into the method of Bogdan or Luck because Bogdan teaches of molding the materials to standard sandwich size and Luck does not teach of a sauce bar that requires cutting. Applicant’s argument is not convincing as it would be obvious to cut the material if the consumer desired half a sandwich condiment piece.” In response, rejections of claims are not based on “if” or future predictions or forecasts. The

Examiner is basing a rejection on “if the consumer desired.” Rejections are based on the teachings of the cited art and what would have been obvious at the time the invention was made. The Examiner’s statement of rejection is Bogdan in view of Luck. Further, the motivation must come from the art cited and Applicant’s claim requires an active step of cutting in the method of forming the condiment slice. Further, Applicant’s claim is drawn to forming a condiment slice – not half a condiment slice. Neither of the Bogdan or Luck references teaches cutting. Further, it is unclear why the Examiner is presenting an obvious statement in response to an argument presented by Applicant. This is a new grounds and basis of rejection of claim 40 not previously presented by the Examiner. Applicant has not amended the claims. Accordingly, the rejection over Bogdan in view of Luck should be withdrawn and a new non-final Office action stating the Examiner’s new position for rejection is requested. Additionally, Applicant has requested references to support the Examiner’s well-known statements – the Examiner has disregarded this request.

At page 11, line 22, through page 12, line 5, the Examiner states “...in response to Applicant's argument that Alden does not teach of cutting as recited in claims 43 and 44... in this case, cutting pizza was well-known and the claim limitations have been rejected over the knowledge available to one of ordinary skill in the art...Applicant further argues that it would not be obvious to cut the pizza disk as taught by Alden.” In response, using the statement that cutting is well-known is not motivation to cut. The Examiner’s statements are contradictory – first stating that Applicant argued, “Alden does not teach cutting” and then stating that Applicant argued, “it would not be obvious to cut the pizza disk as taught by Alden.” The argument that Applicant actually presented to the rejection of claim 43 and 44 was that Alden teaches away from cutting, breaking, or tearing. It is the intention of Alden to maintain an intact pizza disk for packaging and shipment to establishments. Further, the Examiner has completely disregarded the merits of claims 22, 43, 44, and 45. The Alden teachings are in no way similar or related to Applicant’s claimed method. There are no similarities in what Alden teaches and what Applicant claims. The Alden art is non-analogous.

The Examiner states at page 12, lines 1-2 that “Applicant further argues that it would not be obvious to cut the pizza disk as taught by Alden.” In response, Applicant never made any reference or statement or implication that Alden cut pizza disks. In fact, Applicant has consistently argued that Alden does not teach cutting.

The Examiner argues at page 12, lines 2-5, with respect to claim 37, “...once the pizza disk was applied to the pizza base and a consumer intended to eat the pizza, it would have been obvious to cut the pizza, including the cutting of the pizza disk.” In response, the intent to eat pizza does not imply cutting. Further, obviousness rejections of claims are not based on what consumers “intend to do” or “if, then, logic” or future predictions or forecasts. The Examiner is basing a rejection on “**if the consumer desires to do something, then it would have been obvious.**” Rejections are based on the teachings of the cited art and what would have been obvious at the time the invention was made. Further, the motivation must come from the art cited and Applicant’s claim requires an active step of cutting. Alden does not teach cutting and the Aden reference is completely non-analogous to Applicant’s claimed invention. Further, it is unclear why the Examiner is presenting an obvious statement in response to an argument presented by Applicant. This is a new grounds and basis of rejection of claim 37 not previously presented by the Examiner. Accordingly, the rejection over Alden should be withdrawn and a new non-final Office action stating the Examiner’s new position for rejection is requested. Additionally, Applicant has requested references to support the Examiner’s well-known statements – the Examiner has disregarded this request.

At page 12, lines 6-12, the Examiner states, with respect to claim 37, “Applicant argues that Alden does not teach of the limitations as recited in claim 37. Applicant is referred to the Office action pages 10-11 which addresses the limitations of claim 37.” In response, neither the Office action nor the Alden reference addresses the limitations of claim 37. The Examiner is stating that Alden teaches limitations that are not actually taught by Alden. The Examiner simply indicates that “it would have been obvious to use a mold with heating plates which fuse the material inside into one in order to combine the steps of fusing and molding into one process...” In response, Applicant’s claim presents detailed limitations not addressed by the Examiner. Applicant’s claim limitations intentionally position condiment sections in a first mold section such that the condiment sections abut to form a fusion line. The fusion line is adjacent a first heating/cooling plate. A second mold section having a second heating/cooling plate is mated with the first mold section. Heating the first and second heating/cooling plates to cause the abutting condiment sections to flow and fuse together along the fusion line. The Examiner stating that it is obvious and well known to do all these steps is an unacceptable basis for rejection. Alden teaches none of the method steps and it is not obvious to introduce the modifications that the Examiner has suggested into the method of Alden. The Examiner has failed to provide sound reasoning and support for the deficiencies of the Alden teachings. In fact, Alden is entirely deficient and is completely unrelated to Applicant’s claimed method. The Examiner simply dismisses what is stated by the Examiner to be differences between the claims and the art as well

known. The Examiner continues to resist Applicant's request to provide support for well-known and obvious statements made against Applicant's claims. The Examiner is requested to withdraw this rejection because the art does not meet the claim limitations.

At page 12, lines 13-16, the Examiner states, with respect to claims 22, 43, and 44, "Applicant argues that Alden does not teach of weaving." The Examiner further states "weaving is defined as for form by combining various elements as a whole. As Alden teaches of combining various condiments as a whole into a frozen pizza disk, Alden teaches of a woven condiment sheet." In response, the Examiner indicated in the first rejection that "intermingled" means "interwoven." The Examiner now states, "weaving is defined as... combining various elements as a whole." In response, this statement represents new grounds of rejection. This statement by the Examiner was not presented in the previous Office action. Accordingly, a new non-final Office action stating the Examiner's new position for rejection is requested. Applicant has not amended the claims. Applicant's definition of weaving, as set forth in applicant's specification and drawings is clear as to the meaning of interweaving food condiment strips/strands. The Examiner is reaching to fit Alden to Applicant's claim limitations. The Alden reference, however, is non-analogous and completely unrelated to the subject matter that Applicant is concerned. Alden does not teach weaving, interweaving, woven food condiments or woven condiment sheets. Alden distributes food product – Alden does interweave food condiment strips. The Examiner's interpretation and definition of weaving is unreasonable and outside of the plain meaning of the term. The plain meaning of interweaving, weaving, and woven is consistent with the meaning described in Applicant's specification and drawings. Applicant's claim language is not broader than the embodiments disclosed in Applicant's specification and drawings for forming woven food condiments.

At page 12, lines 23-25, the Examiner states, with respect to claim 45, "Applicant argues that the Examiner does not address the limitations of the edge sealer as recited in claim 45. Applicant is referred to the previous Office action, pages 11-12." In response, it is unclear why the Examiner is referring Applicant to the previous Office action. Applicant has responded to the rejection and indicated why Alden does not meet the limitations of claim 45. The Examiner has not responded to the arguments presented by Applicant. Applicant clearly pointed to the deficiencies of the Alden reference and to the deficiencies of the rejection. The Examiner has chosen to disregard specific limitations pointed to by the Applicant as not being addressed by the rejection. The Examiner is again requested to respond to Applicant's arguments regarding claim 45.

E) Response to Claim Rejections – 35 USC § 102 and 35 USC § 103:

1. Claims 23, 30, and 36 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Durst, Patent No. 3,615,597.

• *Specifically regarding the rejection of claim 23:*

Applicant's claim 23 recites: "*a) providing at least one condiment sheet; b) dividing said condiment sheet to form individual condiment slices.*"

It is noted that Durst does not teach the claimed method steps of claim 23. At column 3, lines 26-30, cited by the Examiner, Durst teaches, "the condiments of the present invention can be cubes, sheets, bars, rods, etc." He further teaches at Column 3, lines 49-56, "the admixture was frozen and sliced into sheets..." Durst never discusses dividing the "*sliced sheets*" into food condiment slices – as required by Applicant's claim 23. In fact, nowhere in the reference can the argument be made that Durst specifically recites and anticipates the limitations of claim 23. Also, Durst distinguishes that cubes, sheets, bars, and rods are different. In order for Durst to anticipate claim 23, Durst must recite the specific method steps in the order presented. Durst simply does not do this and claim 23 has been improperly rejected under 35 USC § 102.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Durst does not anticipate the claimed subject matter of claim 23. Accordingly, the Examiner is requested to withdraw this rejection.

• *Specifically regarding the rejection of claim 30:*

Applicant's claim 30 recites: "*a) providing a mold; b) depositing condiment into said mold; c) molding to form said condiment structure; d) removing said condiment structure from said mold.*"

It is noted that Durst does not teach the claimed method steps of claim 30. At column 5, lines 1-8, cited by the Examiner, Durst teaches, "The resultant product was poured into a... polyethylene mold and frozen. The resultant frozen product was then sliced into sheets..." Durst never teaches removing the frozen product from the mold prior to slicing the frozen product into sheets – where claim 30 requires removing the molded condiment structure from the

mold. Applicant's claim 30 recites "*a) providing a mold; b) depositing condiment into said mold; c) molding to form said condiment structure; d) removing said condiment structure from said mold.*" The active step of removing the condiment structure from the mold is not recited by Durst and cannot be assumed to be present. In fact, nowhere in the reference can the argument be made that Durst specifically recites and anticipates these claim limitations. There is no evidence that Durst removes the product from the mold prior to cutting the frozen product. In order for Durst to anticipate claim 30, Durst must recite the specific method steps in the order presented. Durst simply does not do this and claim 30 was improperly rejected under 35 USC § 102. Accordingly, Durst does not recite the claimed limitation and does not anticipate the claimed limitation.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Durst does not anticipate the subject matter of claim 30. Accordingly, the Examiner is requested to withdraw this rejection.

- **Specifically regarding the rejection of claim 36:**

Claim 36 depends from claim 23. The Examiner rejects claim 36 as being anticipated by Durst, but does not specifically address the limitations of claim 36. Since the Examiner does not expressly state where in the reference the limitations of claim 36 are taught, then the claim is improperly rejected and the rejection should be withdrawn and the claim allowed.

2. **Claim 30 has been rejected under 35 U.S.C. 102(b) as being anticipated by Luck, Patent No. 3,966,993.**

- **Specifically regarding the rejection of claim 30:**

The rejection of claim 30 over Luck is noted.

3. Claims 21, 23-27, 30, and 36 have been rejected under 35 U.S.C. 102(b) as being anticipated by Forkner, Patent No. 4,068,007.

- Specifically regarding the rejection of claim 21:

The rejection of claim 21 over Forkner is noted.

- Specifically regarding the rejection of claim 23:

The rejection of claim 23 over Forkner is noted.

- Specifically regarding the rejection of claim 24:

Applicant's claim 24 recites: "*wherein said step of providing at least one condiment sheet comprises mating a plurality of condiment sheets together to form a condiment sheet structure.*"

The Examiner indicates in the rejection of claim 24, "Forkner teaches that two condiment sheets can be bound together with another condiment sheet as a bonding layer (Column 4 lines 26-50 and Figure 5)." In response, the passage cited by the Examiner does not teach the claimed limitation and the teaching cited by the Examiner cannot be located anywhere in the Forkner reference. Note that Applicant's claim limitation requires that the food condiment be in form of a "sheet." Note also that Applicant provides distinct differences in meaning between "sheets" and "slices." Specifically, the slices are formed from sheets in Applicant's claim 23, from which claim 24 depends. The Forkner reference even distinguishes between "sheet" and "wafer" wherein wafers can be formed from sheets. Note that a wafer is not a sheet and the Examiner gives the impression that a "wafer" is a "sheet" (see Office Action at Page 4, second paragraph, where the Examiner recites, "Forkner teaches a process for forming a condiment slice (i.e. a condiment wafer)). The Examiner appears to be selecting and redefining different parts of the Forkner reference where necessary to meet claim limitations. Note that claim 24 recites "*wherein said step of providing at least one condiment sheet comprises mating a plurality of condiment sheets together to form a condiment sheet structure.*" The Examiner appears to be attempting to use a "wafer" as a condiment sheet for meeting the limitation of "*mating a plurality of condiment sheets together*" in claim 24. However, Forkner never teaches, "*mating a plurality of condiment*

sheets together" in claim 24. Also, the Examiner appears to be using "sheet" for meeting the limitations in "*providing at least one condiment sheet*" in claim 23 above. It is noted that claim 24 depends from and further limits claim 23. It is improper for the Examiner to use one part of a reference in the rejection of claim 23 and a second part of the reference with an alternative meaning for claim 24. The combination of claims 23 and 24 is a logical progression of method steps. It is improper to shift between alternatives in a reference to reject independent and dependent claims. The dependent claim must be read in conjunction with the independent claim. Accordingly, the Examiner has misrepresented the teachings of Forkner as being rejected under 35 USC § 102 and is requested to withdraw this rejection.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Forkner does not anticipate the subject matter of claim 24. Accordingly, the Examiner is requested to withdraw this rejection.

- *Specifically regarding the rejection of claim 25:*

Claim 25 recites: "*wherein said forming method comprises a bonding step performed by heating at least one face surface of said plurality of condiment sheets.*"

The Examiner indicates in the rejection of claim 25, "*Forkner teaches that two condiment sheets can be bound together with another condiment sheet as a bonding layer (Column 4 lines 26-50 and Figure 5).*" In response, the passage cited by the Examiner does not teach the claimed limitation and *the teaching cited by the Examiner cannot be located anywhere in the Forkner reference.* Note that Applicant's claim limitation requires that the food condiment be in form of a "sheet." Note also that Applicant provides distinct differences in meaning between "sheets" and "slices." The Forkner reference even distinguishes between "*sheet*" and "*wafer*" wherein wafers can be formed from sheets. Note that a "wafer" is not a "sheet" (see Office Action at Page 4, second paragraph, where the Examiner recites, "Forkner teaches a process for forming a condiment slice (i.e. a condiment wafer)). The Examiner appears to be selecting and redefining different parts of the Forkner reference where

necessary to meet claim limitations. Note that claim 24, from which claim 25 depends, recites “*wherein said step of providing at least one condiment sheet comprises mating a plurality of condiment sheets together to form a condiment sheet structure.*” Note also that claim 25 recites “*wherein said forming method comprises a bonding step performed by heating at least one face surface of said plurality of condiment sheets.*” This means that at least one face surface of the plurality condiment sheets is heated for bonding. Nowhere does Forkner teach heating a food condiment sheet.

The Examiner appears to be attempting to use a “wafer” as a condiment sheet for meeting the limitation of “*mating a plurality of condiment sheets together*” in claim 24 and using “sheet” for meeting the limitations in “*providing at least one condiment sheet*” in claim 23 above. However, Forkner never teaches, “*heating at least one face surface of said plurality of condiment sheets*” as in claim 25 and “*mating a plurality of condiment sheets together*” as in claim 24. It is improper for the Examiner to use one part of a reference in the rejection of claim 24 and a second part of the reference with an alternative meaning for claim 25. The combination of claims 24 and 25 is a logical progression of method steps. It is improper to shift between alternatives in a reference to reject independent and dependent claims. The dependent claims must be read in conjunction with the independent claim. Accordingly, the Examiner has misrepresented the teachings of Forkner rejected under 35 USC § 102 and is requested to withdraw this rejection.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Forkner does not anticipate the claimed subject matter of claim 25. Accordingly, the Examiner is requested to withdraw this rejection.

- Specifically regarding the rejection of claim 26:

Claim 26 recites: “*wherein said method comprises providing at least one bonding layer positioned with said plurality of condiment sheets.*” Note that claim 24, from which claim 26 depends, recites “*wherein said step of providing at least one condiment sheet comprises mating a plurality of condiment sheets*

together to form a condiment sheet structure." This means that at least one bonding layer is positioned with said plurality of condiment sheets.

The Examiner indicates in the rejection of claim 26 "Forkner teaches that two condiment sheets can be bound together with another condiment sheet as a bonding layer (Column 4 lines 26-50 and Figure 5)." In response, the passage cited by the Examiner does not teach the claimed limitation and the teaching cited by the Examiner cannot be located anywhere in the Forkner reference. Note that Applicant's claim limitation requires that the food condiment be in form of a "sheet." Note also that Applicant provides distinct differences in meaning between "sheets" and "slices." The Forkner reference even distinguishes between "sheet" and "wafer" wherein wafers can be formed from sheets. Note that a wafer is not a sheet. The Examiner appears to be selecting and redefining different parts of the Forkner reference where necessary to meet claim limitations.

The Examiner appears to be attempting to use a "wafer" as a condiment sheet for meeting the limitation of "*mating a plurality of condiment sheets together*" in claim 24 and using "sheet" for meeting the limitations in "*providing at least one condiment sheet*" in claim 23 above. However, Forkner never teaches, "*providing at least one bonding layer*" as in claim 26 or "*mating a plurality of condiment sheets together*" as in claim 24. The combination of claims 23, 24, and 26 is a logical progression of method steps. It is unclear what the Examiner is using as a bonding layer. From the stated rejection in the Office action and the reference made to Figure 5 by the Examiner, it appears that the Examiner is defining some of the wafers as bonding layers. However, the Forkner reference teaches that the wafers are wafers and nothing else. Forkner distinguishes between "sheet" and "wafer" by forming sheets from which wafers are cut and, alternatively, forming wafers separately. The Examiner is taking the teachings of the Forkner reference out of context by simultaneously defining the same element as different elements under 35 USC § 102. Accordingly, the Examiner has misrepresented and misconstrued the teachings of Forkner under 35 USC § 102 and is requested to withdraw this rejection.

The Examiner states in the Office action at page 5, line 19, through page 6, line 11, that "Forkner teaches that two condiment sheets can be bound together with another condiment sheet as a bonding layer (Column 4, lines 26-50 and Figure 5)..." In response, the teaching of Forkner does not address Applicant's claim limitations. Specifically, as stated by Applicant in the original response, Forkner fails to teach the combination of claims 23, 24 and 26. Claim 24 depends from step a) of claim 23. The combination of claims 23 and 24 require: A method of forming individual condiment slices; mating a plurality of condiment sheets together; then dividing the plurality to form condiment slices. Forkner does not have a dividing step following the mating step referred to by the Examiner. Applicant argues the term "sheets" and "slices" as different because each term has a meaning. That is, something different is produced following the mating and dividing steps. Forkner simply does not teach the dividing step.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Forkner does not anticipate the claimed subject matter of claim 26. Accordingly, the Examiner is requested to withdraw this rejection.

- Specifically regarding the rejection of claim 27:

Note that claim 23 recites: "*a) providing at least one condiment sheet; b) dividing said at least one condiment sheet to form individual condiment slices.*"

Note that claim 24 depends from claim 23 and recites, "*wherein said step of providing at least one condiment sheet comprises mating a plurality of condiment sheets together to form a condiment sheet structure.*" This limitation refers back to step a) of claim 23 and means that a plurality of condiment sheets are mated together.

Claim 26 depends from claim 24 and recites: "*wherein said method comprises providing at least one bonding layer positioned with said plurality of condiment sheets.*" This step further limits claim 24 and means that at least one bonding layer is positioned with said plurality of condiment sheets.

Claim 27 depends from claim 26 and recites: “*wherein said method comprises a bonding step of heating at least one face surface of said at least one bonding layer and/or heating at least one face surface of said plurality of condiment sheets.*” This step further limits claim 26 and means heating at least one face surface of the bonding layer and/or at least one surface of the plurality of condiment sheets.

The Examiner indicates in the rejection “Forkner teaches that two condiment sheets can be bound together with another condiment sheet as a bonding layer (Column 4 lines 26-50 and Figure 5).” In response, the passage cited by the Examiner does not teach the claimed limitation and the teaching cited by the Examiner cannot be located anywhere in the Forkner reference. Note that Applicant’s claim limitation requires that the food condiment be in form of a “sheet.” Note also that Applicant provides distinct differences in meaning between “sheets” and “slices.” That is, slices are formed from sheets. The Forkner reference even distinguishes between “sheet” and “wafer” wherein wafers are formed from sheets. Forkner distinguishes between “sheet” and “wafer” by forming sheets from which wafers are cut and, alternatively, forming, wafers separately. It is further noted that the claim limitations distinguish between “**bonding layer**” and “**condiment sheet**.” The Examiner appears to be selecting and redefining different parts of the Forkner reference where necessary to meet claim limitations.

The Examiner appears to be attempting to use a “wafer” as a condiment sheet for meeting the limitation of “*mating a plurality of condiment sheets together*” in claim 24 and using “sheet” for meeting the limitations in “*providing at least one condiment sheet*” in claim 23 above. Also, Forkner never teaches, “*heating at least one face surface of said at least one bonding layer and/or heating at least one face surface of said plurality of condiment sheets*” as in claim 27. Note claim 27 recites that either or both of the bonding layer face surface and food condiment sheet face layer can be heated. It is unclear what the Examiner is using as a bonding layer. Forkner does not teach, “*providing at least one bonding layer*” as in, claim 26, or “*mating a plurality of condiment sheets together*” as in claim 24. From the stated rejection in the Office action and the reference made to Figure 5 by the Examiner, it appears

that the Examiner is defining some of the wafers as bonding layers. However, the Forkner reference teaches that the wafers are wafers and nothing else. The Examiner is again redefining the literal meaning of the terms taught by the Forkner reference to imply other meanings. Again, Forkner distinguishes between “sheet” and “wafer” by forming sheets from which wafers are cut and, alternatively, forming, wafers separately. It is further noted that the claim limitations distinguish between “bonding layer” and “condiment sheet.” The Examiner is taking the teachings of the Forkner reference out of context and simultaneously defining the same element as different elements under 35 USC § 102. Accordingly, the Examiner has misrepresented and misconstrued the teachings of Forkner under 35 USC § 102 and the Examiner is requested to withdraw this rejection.

The Examiner states in the Office action at page 5, line 19, through page 6, line 11, that “Forkner teaches that two condiment sheets can be bound together with another condiment sheet as a bolding layer (Column 4, lines 26-50 and Figure 5)…” In response, the teaching of Forkner does not address Applicant’s claim limitations. Specifically, as stated by Applicant in the original response, Forkner fails to teach the combination of claims 23, 24, 26, and 27. Claim 24 depends from step a) of claim 23. The combination of claims 23 and 24 require: A method of forming individual condiment slices; mating a plurality of condiment sheets together; then dividing the plurality to form condiment slices. Forkner does not have a dividing step following the mating step referred to by the Examiner. Applicant argues the term “sheets” and “slices” as different because each term has a meaning. That is, something different is produced following the mating and dividing steps. Forkner simply does not teach the dividing step.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Forkner does not anticipate the claimed subject matter of claim 27. Accordingly, the Examiner is requested to withdraw this rejection.

- Specifically regarding the rejection of claim 30:

The rejection of claim 30 over Forkner is noted.

- Specifically regarding the rejection of claim 36:

Claim 36 depends from claim 23. The Examiner rejects claim 36 as being anticipated by Forkner, but does not specifically address the limitations of claim 36. Since the Examiner does not specifically state where in the reference the limitations of claim 36 are taught, then the claim is improperly rejected and the rejection should be withdrawn and the claim allowed.

4. Claims 30, 31, and 35 have been rejected under 35 U.S.C. 102(b) as being anticipated by Bogdan, Patent No. 5,855,939.

- Specifically regarding the rejection of claim 30:

The rejection of claim 30 over Bogdan is noted.

- Specifically regarding the rejection of claim 31:

Claim 31 recites: “*wherein said mold comprises designs, indicia, or cavities for providing borders, words, or designs to the condiment structure.*”

The Examiner indicates in the rejection “*the condiment slice may be formed in any suitable size and shape including comic characters, thus Bogdan teaches a mold comprising designs or cavities for providing borders or designs to the condiment structure.*” In response, Applicant’s claim 31 recites that the mold comprises designs indicia, or cavities for providing borders, words, or designs to the condiment structure. The passage cited by the Examiner only describes the shape of the condiment may include a comic character. The Examiner states in the rejection “*...thus Bogdan teaches...*” This is clearly a conclusion drawn by the Examiner and the claimed limitation *is not* recited in the Bogdan reference. The passage in Bogdan does not describe that the mold has any designs, indicia, etc for providing a design to the condiment. Accordingly, claim 31 was improperly rejected under 35 USC § 102 because Bogdan does not recite the claimed limitation and does not anticipate the claim.

The Examiner argues, with respect to claim 31, that because Bogdan teaches that the condiments can have a comic character shape, the Bogdan mold would inherently have to have designs for forming borders and/or designs. In response, Applicant's claim 30 requires that the mold comprise designs, indicia, or cavities for providing borders, words or designs to the condiment structure. Applicant's claim is not concerned with the shape of the structure. Bogdan discloses at column 3, lines 1-3, "The food slices of the invention may be formed in any suitable shape or size, for example, comic characters." Again, there is no mention in the passage of providing the mold with features that would result in the features being formed on or in the resultant molded condiment structure. Applicant claims a method by which the features are formed in the molded condiment structure.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Bogdan does not anticipate the claimed subject matter of claim 31. Accordingly, the Examiner is requested to withdraw this rejection.

- Specifically regarding the rejection of claim 35:

Note that claim 35 recites: "...depositing a predetermined quantity of condiment into an upper mold such that the condiment in the lower mold compartment contacts and forms a partial face fusion with the condiment in the upper compartment."

Bogdan does not show or teach a mold comprising an upper compartment and a lower compartment, as required by claim 35. Note that the Bogdan mold only has one compartment in which condiment material is placed. Applicant's claim specifically requires two compartments for the mold. Nowhere in the Bogdan reference is there disclosed a two-compartment mold. Molds 14 and 18 disclosed by Bogdan are not two-compartment molds having an upper mold section and a lower mold section. Further, claim 35 requires that the condiment material deposited in the lower mold section of the two-compartment mold form a partial face fusion with the condiment material deposited in the upper mold section of the two-compartment mold. None of the condiment structures disclosed by Bogdan have partial face fusion. Bogdan simply does not meet

either of these limitations and does not anticipate the claim limitations. In fact, nowhere in the reference can the argument be made that Bogdan specifically recites and anticipates these claim limitations. In order for Bogdan to anticipate the claim, Bogdan must recite the specific limitations in the claim. Bogdan simply does not do this and claim 35 was improperly rejected under 35 USC § 102. Accordingly, Bogdan does not recite the claimed limitation and does not anticipate the claimed limitation.

With respect to claim 35, the Examiner refers Applicant to column 2, lines 14-30. In response, Bogdan does not teach claim 35. Nowhere in the Bogdan reference is a method of “*...depositing a predetermined quantity of condiment into an upper compartment of said mold such that the condiment in the lower mold compartment contacts and forms a partial face fusion with the condiment in the upper compartment.*” The Examiner has still not explained how claim 35 is met.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Bogdan does not anticipate the claimed subject matter of claim 35. Accordingly, the Examiner is requested to withdraw this rejection.

5. Claims 21, 22, 30, 41, 42, and 51 have been rejected under 35 U.S.C. 102(b) as being anticipated by Alden, Patent No. 5,894,028.

• Specifically regarding the rejection of claim 21:

Claim 21 recites: “*a) forming condiment sheets; b) dividing said condiment sheets into condiment sections; c) joining surfaces of said condiment sections to form said condiment structure.*” Alden does not show or teach the limitations of claim 21. The Examiner does not indicate in the rejection where Alden teaches the claimed limitations. The intention of Alden is to make pizza sauce disks – not to form food condiment sheets, divide the food condiment sheets into sections, and then join the sections. In fact, Alden does not disclose, teach, or suggest forming condiment sheets. Note that the claimed limitation requires that the food condiment sheets be formed as part of the process. This is an active step of forming in the claimed method.

The Examiner indicates that the Abstract teaches forming a condiment slice. It is unclear what in the Abstract the Examiner is relying on to teach, “forming a condiment slice.” The initial step in Applicant’s claimed method is ***“forming condiment sheets.”*** The Examiner indicates that Alden teaches forming condiment sheets (i.e. bulk supplies such as sausage logs) at column 6, lines 36-67. In response, it is noted that providing “bulk supplies” is not an active method step of forming condiment sheets. Alden simply does not meet the claim limitation of **forming condiment sheets** and claim 21 was improperly rejected under 35 USC § 102 over Alden and the rejection should be withdrawn. Accordingly, Alden does not recite the claimed limitation and does not anticipate the claimed limitation.

The second step in Applicant’s claimed method is ***“dividing said condiment sheets into condiment sections.”*** The Examiner indicates that Alden teaches dividing the bulk supplies and this meets the claimed limitation. In response, Alden is dividing provided “bulk supplies” – not condiment sheets formed during an initial method step as claimed by Applicant. Again, claim 21 was improperly rejected under 35 USC § 102 over Alden and should be withdrawn. Accordingly, Alden does not recite the claimed limitation and does not anticipate the claimed limitation.

The third step in Applicant’s claim 21 recites ***“joining surfaces of said condiment sections to form said condiment structure.”*** The Examiner indicates that this claim limitation is recited at column 6, lines 36-67 of the reference. In response, this claim limitation cannot be found anywhere in the Alden reference. The joining step in Applicant’s claim 21 joins together surfaces of the condiment sections divided previously from the formed condiment sheets. Alden simply does not do this and claim 21 was improperly rejected under 35 USC § 102 over Alden and should be withdrawn. Accordingly, Alden does not recite the claimed limitation and does not anticipate the claimed limitation.

The Examiner argues that Alden teaches step (a) of forming food condiment sheets using pizza sauce. The Examiner does not indicate where Alden teaches step (b) of dividing said condiment sheets into condiment sections. Note that step (b) further limits step (a). Step (c) of claim 21 recites:

“joining surfaces of said condiment sections to form said condiment structure.” Step (c) refers back to step (b) and the preamble. The Examiner does not indicate where in Alden that step (c) is taught. The Examiner further states that Applicant’s argument is based on whether pizza sauce disks can be defined as food condiment slices. In response, the Examiner is misrepresenting Applicant’s argument. Applicant is actually indicating to the Examiner that Alden does not teach the method steps claimed by Applicant and the Examiner has not pointed to the passage where Alden teaches the successive method steps.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Alden does not anticipate the subject matter of claim 21. Accordingly, the Examiner is requested to withdraw this rejection.

- **Specifically regarding the rejection of claim 22:**

Claim 22 recites: “*a) providing individual strips and/or strands formed from at least one condiment; b) interweaving said individual strips and/or strands of said at least one condiment to form said condiment structure.”*

Alden does not show or teach the limitations of claim 22. Specifically, Alden does not teach: “*a) providing strips and/or strands formed from at least one condiment; b); interweaving said individual strips and/or strands of said at least one condiment to form said condiment structure.”* The intention of Alden is to make pizza sauce disks – not to form food condiment slices. In fact, Alden does not disclose, teach, or suggest forming condiment slices.

The initial method step in Applicant’s claim 22 is “*providing strips and/or strands formed from at least one condiment*” The Examiner indicates that “*Alden teaches that the condiment slices are formed from molds and can include several condiments that are intermingled (i.e. interweaved) by fusing together in a heating station (Column 2 line 66 through Column 3 line 17, Column 3 line 67 through Column 4 line 51, and Column 7, lines 4-12).*” In response, the Alden reference does not disclose forming condiment slices formed from molds, as indicated by the Examiner. It is also noted that the Examiner indicates that “intermingled” is equivalent or similar to “interweaving.” However, “intermingled” and “interweaving” are not the

same and nowhere in the reference can either word be located. The Alden reference does not teach, “*interweaving*.” The Alden reference does not teach, “*interweaving individual strips and/or strands of said at least one food condiment...*” The Examiner also indicates in the rejection that “*...dividing the condiment sheets by cutting into individual strips or strands (i.e. slicing)...*” In response, “*cutting into individual strips or strands*” is not recited in the reference as indicated by the Examiner. Further, “*slicing*” is not “*strips and/or strands*” and does not imply “*strips and/or strands*” are cut from “*bulk supplies*.” The Examiner has improperly rejected claim 22 under 35 USC § 102 over Alden by making comparisons, similarities, assumptions and drawing conclusions that are not supported by the Alden reference.

At page 7, lines 4-10, the Examiner argues that Alden teaches weaving at column 3, lines 15-16 and column 3, line 67 through column 4, line 51. In response, Applicant maintains the position that interweaving is not taught or suggested by Alden. It is further noted that claim 22 is a method of forming a condiment structure that comprises providing individual strips and/or strands of said at least one condiment to form said condiment structure. The Examiner argues, “*interweaving is defined as to become woven together, interlaced, or intermingled, thus Alden teaches of interweaving as the term is defined.*” In response, the Alden reference fails to use any of the terms cited in the Examiner’s definition. Accordingly, there is no passage in Alden on which to base the Examiner’s definition. The Examiner also states, “*Applicant further argues that Alden teaches of intermingling which is not interweaving.*” For the record, Applicant has never presented any such statement. In fact, Applicant has consistently argued that Alden does not use any of the terms claimed by Applicant and Applicant has consistently argued that the terms “*intermingling*” and “*interweaving*” are not equal. Applicant hereby requests that the Examiner provide a definition showing that the “*interweaving*” is equivalent to “*intermingling*” in the context of Applicant’s disclosure. Applicant further requests that the Examiner provide a definition showing that the “*weaving*” is equivalent to “*intermingling*” in the context of Applicant’s disclosure. It is further noted that the interweaving of said individual food condiment strips and/or strands form said food condiment structure. There is no method in Alden

that uses interweaving of food condiment strips and/or strands to form a condiment structure.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Alden does not anticipate the claimed subject matter of claim 22. Accordingly, the Examiner is requested to withdraw this rejection.

- **Specifically regarding the rejection of claim 30:**

Alden does not show or teach the limitations of claim 30. Specifically, Alden does not teach: “*a) providing a mold; b depositing condiment into said mold; c) molding to form said condiment structure; d) removing said condiment structure from said mold.*” The intention of Alden is to make pizza sauce disks – not to form food condiment slices. In fact, Alden does not disclose, teach, or suggest forming condiment slices. Alden fails to teach any of the steps of claim 30.

The Examiner has improperly rejected claim 30 under 35 USC § 102 over Alden by making comparisons, similarities, assumptions and drawing conclusions that are not supported by the Alden reference.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Alden does not anticipate the claimed subject matter of claim 30. Accordingly, the Examiner is requested to withdraw this rejection.

- **Specifically regarding the rejection of claim 41:**

Claim 22, from which claim 41 depends, recites: “*a) providing individual strips and/or strands formed from at least one condiment; b) interweaving said individual strips and/or strands of said at least one condiment to form said condiment structure.*” The Alden reference does not teach the claim limitations of claim 22 as recited above.

Claim 41, which depends from claim 22, recites: “*wherein said step of providing individual strips and/or strands formed from at least one condiment comprises cutting said strips and/or strands from at least one condiment sheet.*”

The Examiner indicates that Alden teaches dividing the “bulk supplies” and this meets the limitation of claim 41. The Examiner indicates that Alden teaches forming condiment sheets (i.e. bulk supplies such as sausage logs) at column 6, lines 36-67.

In response, it is noted that the provided “bulk supplies” to which the Examiner refers is not a method step of forming condiment sheets. Alden is dividing provided bulk supplies – not condiment sheets, as claimed. Further, the Alden reference does not teach the method step of “*interweaving individual strips and/or strands*” or “*cutting into individual strips and/or strands*” as presented in claim 22. Accordingly, “*cutting into individual strips or strands*” is not recited in the reference as indicated by the Examiner. Further, “*slicing*” is not “*strips and/or strands*” and does not imply “strips and/or strands” are cut from “bulk supplies.” Claim 41 was improperly rejected under 35 USC § 102 over Alden and should be withdrawn. Accordingly, Alden does not recite the claimed limitation and does not anticipate the claimed limitation.

The Examiner argues at page 7, lines 16-18 that “there are no structural limitations to define a strip or a strand and Alden teaches of cutting pepperoni logs and whole vegetables into pieces...” In response, Alden does not teach interweaving strips and/or strands as claimed.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Alden does not anticipate the claimed subject matter of claim 22. Accordingly, the Examiner is requested to withdraw this rejection.

- *Specifically regarding the rejection of claim 42:*

The Examiner has failed to properly address why claim 42 is rejected over Alden. Nowhere in the rejection is there a discussion describing the conclusions of the Examiner with respect to claim 42. Accordingly, the Office action is incomplete and a new non-final Office action addressing all of the claim limitations of claim 42 is hereby requested.

However, with respect to claim 42, Applicant submits that Alden does not teach interweaving strips and/or strands of food condiment at any desired angle

and pattern. A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference.

- *Specifically regarding the rejection of claim 51:*

Claim 51, which depends from claims 41 and 22, further defined “*the at least one condiment sheet*” of claim 41. However, the condiment sheets recited in Applicant’s claim 51 are not disclosed in the Alden reference.

In response, it is noted that “bulk supplies” is not a method step for forming condiment sheets. Alden is dividing provided bulk supplies – not condiment sheets, as claimed. Claim 51 was improperly rejected under 35 USC § 102 over Alden and should be withdrawn. Accordingly, Alden does not recite the claimed limitation and does not anticipate the claimed limitation.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Alden does not anticipate the claimed subject matter of claim 51. Accordingly, the Examiner is requested to withdraw this rejection.

6. **Claims 28, 29, 32-34, and 36 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Durst, Patent No. 3,615,597.**

- *Specifically regarding the rejection of claim 28:*

Claim 23, from which claim 28 depends, recites: “*a) providing at least one condiment sheet; b) dividing said at least one condiment sheet to form individual condiment slices.*” It is noted that Durst does not meet the limitations of claim 23, as discussed above.

Claim 28 recites: “*wherein said dividing step comprises performing single successive cuts on said at least one condiment sheet to form each of said condiment slices.*”

The Examiner has rejected claim 28 as being “...obvious to form a condiment slice by cutting a condiment structure into strips first and then cutting the condiment strips into individual condiment slices through successive cutting operations.” The claim, however, is not drawn to forming “strips” and then cutting “slices” from the “strips” as the Examiner has proposed. Claim 28

requires that single, successive cuts be performed on a sheet to form each condiment slice.

The Examiner asserts the following obvious statement: “...it would be obvious...to form a condiment slice through a single cutting operation depending on the desired size of the final condiment slice and the original size of the condiment structure.” What original size or shape of condiment structure would motivate Durst to use a single cutting operation to form a plurality of food condiment slices? What desired size of the final condiment slice would motivate Durst to use a single cutting operation to form a plurality of food condiment slices? Since Durst does not disclose the size of the sheets from which the final condiments are formed, then merely dismissing the claim as a function of the size of the sheet is improper. There must be motivation for Durst to divide the sheet as Applicant claims. The Examiner also states in the rejection “...it would be within the ordinary ingenuity and common sense of one of ordinary skill in the art to cut a condiment structure to form a condiment slice in one cutting operation or multiple cutting operations depending on the desired final size of the condiment slice...” It is unclear to Applicant why the desired final size of the condiment slice would influence the cutting operation. What desired final sizes of food condiment slice would motivate Durst to choose either a single cutting operation or multiple cutting operations? The Examiner’s assertion of ingenuity and common sense is not based on any evidence in the record. The Examiner cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims.

The cutting operation disclosed by Durst does not meet the limitations of claim 28. The Durst reference does not disclose or suggest that the cutting step can be performed using single successive cuts. Further, the sheet formed by Durst from the admixture is not divided as required by the claim. That is, Durst does not teach that the sheets formed are further divided. The Examiner is hereby requested to provide a reference that supports the well-known and obvious statements or withdraw the rejection.

- Specifically regarding the rejection of claim 29:

Claim 29 recites: “*wherein said dividing step comprises forming a plurality of said condiment slices simultaneously with a single cutting operation.*”

The Examiner has rejected claim 29 as being “obvious...to form a condiment slice through a single cutting operation...”

In response, claim 29 is forming a plurality of condiment slices using a single cutting operation. Nowhere does the Durst reference disclose or suggest a cutting operation that divides a food condiment sheet into a plurality of food condiment slices simultaneously using a single cutting operation. The cutting operation disclosed by Durst does not meet the limitations of claim 29.

The Examiner asserts the following obvious statement: “...it would be obvious...to form a condiment slice through a single cutting operation depending on the desired size of the final condiment slice and the original size of the condiment structure.” What original size or shape of condiment structure would motivate Durst to use a single cutting operation to form a plurality of food condiment slices? What desired size of the final condiment slice would motivate Durst to use a single cutting operation to form a plurality of food condiment slices? Since Durst does not disclose the size of the sheets from which the final condiments are formed, then merely dismissing the claim as a function of the size of the sheet is improper. There must be motivation for Durst to divide the sheet as Applicant claims. The Examiner also states in the rejection “...it would be within the ordinary ingenuity and common sense of one of ordinary skill in the art to cut a condiment structure to form a condiment slice in one cutting operation or multiple cutting operations depending on the desired final size of the condiment slice...” It is unclear to Applicant why the desired final size of the condiment slice would influence the cutting operation. What desired final sizes of food condiment slice would motivate Durst to choose either a single cutting operation or multiple cutting operations?

The Durst reference simply does not disclose or suggest that a plurality of condiment slices is formed simultaneously using a single cutting operation. The Examiner is hereby requested to provide a reference that supports the obvious

statements or withdraw the rejection. The Examiner's assertion of ingenuity and common sense is not based on any evidence in the record.

- Specifically regarding the rejections of claims 32 and 33:

Claim 32 recites: "*wherein said dividing step comprises forming a plurality of individual condiment strip sheets from said at least one condiment sheet prior to forming said condiment slices.*"

Claim 33 recites: "*wherein said dividing step further comprises forming said condiment slices from said plurality of condiment strip sheets.*"

The Examiner states in the rejection "...it would be obvious...to form a condiment slice by cutting a condiment structure into strips first and then cutting the condiment strips into individual condiment slices through successive cutting operations...depending on the desired size of the final condiment slice and the original size of the condiment structure." At column 3, lines 26-30, cited by the Examiner, Durst teaches, "the condiments of the present invention can be cubes, sheets, bars, rods, etc." He further teaches at Column 3, lines 49-56 that "the admixture was frozen and sliced into sheets..." Durst never discusses dividing these sheets into food condiment slices – as required by Applicant's claim 23, from which claims 32 and 33 depend. The teachings of Durst do not support such a cutting operation, as claimed by Applicant. What original size of condiment structure would motivate Durst to cut a condiment structure into strip sheets first and then cut the strip sheets into individual condiment slices? What desired size of the final condiment slice would motivate Durst to use successive cutting operations to form a plurality of food condiment slices? Since Durst does not disclose the size of the sheets from which the final condiments are formed, then merely dismissing the claim as a function of the size of the sheet is improper. Further, the Durst method does not teach or support large-scale continuous operations. There must be motivation for Durst to divide the sheet as Applicant claims. The Examiner also states in the rejection "...it would be within the ordinary ingenuity and common sense of one of ordinary skill in the art to cut a condiment structure to form a condiment slice in one cutting operation or multiple cutting operations depending on the desired final size of the condiment slice..." It is unclear to Applicant why the

desired final size of the condiment slice would influence the cutting operation. What desired final sizes of food condiment slice would motivate Durst to choose either a single cutting operation or multiple cutting operations?

The Durst reference simply does not disclose or suggest forming strip sheets from a condiment sheet prior to forming condiment slices. The Examiner is hereby requested to provide a reference that supports the well-known and obvious statements or withdraw the rejection. The Examiner's assertion of ingenuity and common sense is not based on any evidence in the record.

- Specifically regarding the rejection of claim 34:

Claim 34 recites: “*wherein said dividing step is performed using a cutting tool comprising at least one cutting blade and at least one shaping surface.*”

The Examiner states in the rejection “...it would have been obvious...to use a blade on cutting the condiment structure...and further obvious...to include a shaping surface while cutting the condiment structure in order to aid in forming the correct size and shape of the final condiment slice.” The Examiner also states “...it would have been obvious...to use a cutting blade in cutting the condiment structure since a blade was a well known readily available cutting device and Durst does not teach of a specific cutting device for cutting the condiment structure.”

In response, nowhere in the Durst reference is it disclosed or suggested to use a cutting tool having at least one cutting blade and at least one shaping surface to perform the dividing step. Durst also teaches at Column 3, lines 49-56 that “the admixture was frozen and sliced into sheets...” Why would the Examiner state that it is obvious to use a cutting tool having a shaping surface to cut the frozen admixture described by Durst? There is no motivation or reason to provide a cutting tool that would provide a shape to the frozen condiment because Durst teaches it is formed in a mold and therefore has the shape of the mold. The Examiner indicates in the rejection that Durst “is silent to the specific cutting details” It is unclear to Applicant how obvious conclusions can be drawn from a reference that is silent on details and provides no motivation for modification. Applicant's method for dividing the food condiment uses a

specific cutting tool for performing the operation. Also, at column 3, lines 26-30, cited by the Examiner, Durst teaches, “the condiments of the present invention can be cubes, sheets, bars, rods, etc.” He further teaches at Column 3, lines 49-56 that “the admixture was frozen and sliced into sheets...” Durst never discusses dividing these sheets into food condiment slices – as required by Applicant’s claim 23, from which claim 34 depends. The teachings of Durst do not support such a cutting operation or cutting tool, as claimed by Applicant.

The Durst reference simply does not disclose or suggest using a cutting tool comprising at least one cutting blade and at least one shaping surface. The Examiner is hereby requested to provide a reference that supports the well-known and obvious statements or withdraw the rejection.

- Specifically regarding the rejection of claim 36:

The Examiner rejects claim 36 as obvious over Durst, but does not specifically address the limitations of claim 36. Claim 36 was rejected under 35 USC § 102 as being anticipated by Durst. It is unclear and confusing to Applicant how the Examiner is interpreting the Durst reference with respect to claim 36. Since the Examiner does not specifically state a reason for rejection, or address the differences between claim 36 and the Durst reference, or provide an obvious statement, then the claim is improperly rejected and should be withdrawn.

7. **Claims 38, 39, 46, 48-50, and 52-56 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Forkner, Patent No. 4,068,007.**

- Specifically regarding the rejection of claim 38:

The Examiner states in the rejection of claim 38 “...Forkner, however, is silent to the method of producing the condiment strips as continuous as recited in claim 38...” The Examiner further states, “...continuous processing and batch processing are well known concepts in the art. It would have been obvious...to have the batch process as taught by Forkner continuous in order to increase efficiency of the process.” In response, nowhere in the Forkner reference is it disclosed or suggested to use a continuous process. Additionally,

continuous processing is not an automatic alternative to batch processing, as the Examiner asserts. Further, the Examiner has not described how Forkner, using a continuous process, meets the limitations of claim 38. The Examiner merely makes a blanket well-known/obvious statement to reject the claim without any explanation.

Regarding step “*a) feeding continuous condiment sheets from continuous molding processes to a dividing station;*” Forkner does not teach a continuous process. Forkner does not teach continuous condiment sheets from continuous molding processes – note that there is more than one continuous condiment sheet and more than one continuous molding process for forming continuous condiment sheets.

Regarding step “*b) dividing said continuous condiment sheets into continuous strips;*” Forkner does not teach dividing continuous condiment sheets formed from continuous molding processes into continuous condiment strips. Forkner does not teach continuous condiment strips.

Regarding step “*c) mating said continuous condiment strips;*” Forkner does not teach mating continuous condiment strips. Note that these condiment strips are continuous and non-broken.

Regarding step “*d) feeding said mated condiment strips to a heating/fusion device;*” Forkner does not teach feeding mated condiment strips to a heating/fusion device.

Regarding step “*e) heating the mating surfaces of said continuous condiment strips to flow point;*” Forkner does not teach heating mating surfaces of continuous condiment strips to the flow point of the condiment material within the heating/fusion device.

Regarding step “*f) abutting the heated mating surfaces of the continuous condiment strips to cause fusion of the surfaces and form a continuous fused combination condiment sheet;*” Forkner does not teach abutting heated mating surfaces of continuous condiment strips to cause fusion of the abutted surfaces and thereby form a continuous fused combination condiment sheet.

Regarding step “*g) dividing said continuous fused combination condiment strip sheet to form condiment slices.*” Forkner does not teach

dividing the continuous fused combination condiment sheet to form condiment slices.

The Forkner reference simply does not disclose or suggest using a continuous process comprising the above claimed method steps. The Examiner is hereby requested to provide a reference that supports the well-known and obvious statement or withdraw the rejection.

- **Specifically regarding the rejection of claim 39:**

The Examiner has failed to properly address why claim 39 is rejected over Forkner. Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to claim 39. Accordingly, the Office Action is incomplete and a new non-final Office action addressing all of the claim limitations is hereby requested.

However, with respect to claim 39, Applicant submits that Forkner does not teach 1) a continuous process, 2) a method step of mating continuous condiment strips in a face-to-face or side-by-side relationship.

- **Specifically regarding the rejection of claim 46:**

Claim 46 recites: “*a) providing a cutting tool; b) forming a condiment slice from at least one condiment sheet using said cutting tool; c) removing the condiment slice from said at least one condiment sheet using said cutting tool; d) mating the cutting tool with a mold section; e) positioning said condiment slice in said mold section; f) heating the periphery of said condiment slice.”*

The Examiner states in the rejection of claim 46 “...Forkner, however, is silent to... mating the cutting tool with the mold section as recited in claim 46...” The Examiner further states, “Regarding mating the cutting tool with the mold section as recited in claim 46... it was well known in the art...for cutting or slice tools to be combined with molding apparatus, including those utilized with edible extruded materials.” In response, the Forkner reference does not disclose or suggest the method step of, “*removing the condiment slice from said at least one condiment sheet using said cutting tool;*” The limitation requires that the cutting tool used to cut the condiment sheet to form a

condiment slice also removes the condiment slice from the condiment sheet following cutting.

Also, the Forkner reference does not disclose or suggest the method step of "*mating the cutting tool with a mold section;*" This limitation requires that the cutting tool used to cut, remove, and carry the cut condiment slice from the condiment sheet be mated with a mold section. Forkner does not teach the claimed method of mating a cutting tool, which is carrying a condiment slice, with a mold section. Forkner only teaches forming a wafer in mold 10 (see Figure 1 and column 3, lines 37-49). Further, it would not have been obvious to use a cutting tool in conjunction with the mold of Figure 1 of Forkner, because Forkner specifically teaches, "*The mold cavity is shown filled with pieces 12 of the expandable material...*" Accordingly, there is no motivation to use a cutting tool in conjunction with a mold because there is no condiment sheet from which to cut a condiment slice. Forkner also teaches in an alternative method, "*a sheet can be formed...and wafers can be cut from such a sheet.*" Accordingly, there is no motivation in this passage to use the mold to form the wafers, as in Figure 1, because the wafers are cut from the sheet – no mold is necessary. Accordingly, it would not have been obvious to modify any of the methods disclosed by Forkner to include using a cutting tool to remove a condiment slice from a condiment sheet and mating the cutting tool with a mold section because the methods of Forkner do not support such modification and would be meaningless, as described above.

The Examiner is hereby requested to provide a reference that supports the well-known and obvious statements or withdraw the rejection.

- *Specifically regarding the rejection of claim 48:*

Claim 48 recites: "*wherein said cutting tool and said mold section are provided with heating/cooling plates for performing said heating of said periphery of said condiment slice.*"

The Examiner states in the rejection of claim 48 "*...Forkner, however, is silent to the cutting tool and mold section as provided with heating plates for heating the condiment slices as recited in claim 48.*" The Examiner further states, "*Forkner teaches of molding, cutting, and fusing together condiment*

slices. It would have been obvious...to use a mold and/or cutting device with heating plates to fuse the material inside into one piece, in order to combine the step of fusing into one step with molding and cutting, thus increasing the efficiency of the process.” In response, the Forkner reference does not disclose or suggest the method step of: a cutting tool and a mold section are provided with heating/cooling plates for performing the heating of the periphery of the cut condiment slice. The limitations of claim 48 must be read in combination with the limitations of claim 46, from which claim 48 depends. First Forkner does not teach the limitations of claim 46, which requires cutting a food condiment slice from a food condiment sheet and mating the cutting tool and a mold section. Claim 48 further limits claim 46 by requiring that both the cutting tool and mold section be provided with heating/cooling plates for performing the heating step of the periphery of the food condiment slice. Forkner does not teach these limitations and does not provide the tools to perform the method. The Examiner has simply dismissed the claim limitations as obvious.

Further, it **would not** have been obvious to use a cutting tool having heating/cooling plates in conjunction with the mold of Figure 1 because Forkner specifically teaches, “The mold cavity is shown filled with pieces 12 of the expandable material...” Accordingly, there is no motivation to use a cutting tool in conjunction with the mold shown by Forkner because there is no condiment sheet from which to cut a condiment slice. In Forkner, a preformed expandable material is formed in the mold, removed from the mold, and further processed for expansion. Applicant’s claim limitations require mating of a cutting tool and mold section – each having heating/cooling plates for heating the periphery of the condiment slice. Note that Applicant’s claim requires that the condiment slice be formed prior to placement in the mold. Forkner also teaches an alternative method, “a sheet can be formed...and wafers can be cut from such a sheet.” Accordingly, there is no motivation to use the mold to form the wafers, as in Figure 1, because the wafers are cut from the sheet – no mold is necessary. Accordingly, it **would not** have been obvious to modify any of the methods disclosed by Forkner to include using a cutting tool having heating/cooling plates to remove a condiment slice from a condiment sheet and mating the cutting tool having heating/cooling plates with a mold section having

heating/cooling plates because the methods of Forkner do not support such modification and would be meaningless, as described above. The Examiner is requested to provide a reference that supports the well-known and obvious statements or withdraw this rejection.

- **Specifically regarding the rejection of claim 49:**

The Examiner has failed to properly address why claim 49 is rejected over Forkner. Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to claim 49. Accordingly, the Office action is incomplete and a new non-final Office action addressing all of the claim limitations of claim 49 is hereby requested.

However, with respect to claim 49, Applicant submits that Forkner does not teach a condiment slice that has a plurality of layers. Nowhere in the Forkner reference is this limitation disclosed.

- **Specifically regarding the rejection of claim 50:**

The Examiner has failed to properly address why claim 50 is rejected over Forkner. Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to claim 50. Accordingly, the Office action is incomplete and a new non-final Office action addressing all of the claim limitations of claim 50 is hereby requested.

The limitations of claim 50 must be read in combination with the limitations of claim 46, from which claim 50 depends. Forkner does not teach the limitations of claim 46, which requires cutting a food condiment slice from a food condiment sheet and mating the cutting tool and a mold section. The condiment slice is cut from at least one condiment sheet, as recited in claim 50. The Examiner is requested to withdraw this rejection.

- **Specifically regarding the rejection of claim 52:**

Claim 52 recites: “*wherein said condiment is in the form of condiment pieces and said depositing step comprises providing a hopper/ejection apparatus for depositing said condiment pieces into said mold.*”

The Examiner states in the rejection of claim 52 “*...Forkner, however, is silent to a hopper/ejection apparatus for depositing condiment pieces into the mold as recited in claim 52.*” The Examiner further states, “*The use of injection nozzle for filling was known in the art; this was commonly done in injecting filling into donut, injecting confection into mold etc.*” In response, Applicant is not injecting filling into donuts or confection into molds. The Examiner never states why it would have been obvious to use **a hopper/ejection apparatus**. Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to claim 52 and the use of a hopper. Accordingly, *the Office Action is incomplete and a new non-final Office action addressing all of the claim limitations is hereby requested.*

However, with respect to the rejection of claim 52, the hopper/ejection apparatus is for depositing **condiment pieces** into a mold. The food condiment pieces are ejected into the mold through a hopper/ejection apparatus and then molded to form a food condiment structure. The Forkner reference does not do, suggest, or teach this limitation.

Additionally, the Forkner reference does not use, suggest, or lend itself to teachings for using a hopper/ejection nozzle apparatus. Further, Forkner does not disclose a large scale or continuous operations that would benefit from the inclusion of a hopper/ejection apparatus. It would **not have** been obvious to modify Forkner because the teachings of Forkner do not lend the methods of Forkner to the use of a hopper/ejection nozzle apparatus.

It is also noted that Claim 52 further limits claim 30 and must be read in combination with independent claim 30.

The Forkner reference simply does not disclose or suggest using a hopper/ejection apparatus for depositing condiment pieces into a mold. The Examiner is hereby requested to provide a reference that supports the well-known and obvious statements or withdraw the rejection.

- **Specifically regarding the rejection of claim 53:**

Claim 53 recites: “*wherein said hopper/ejection apparatus comprises an ejection nozzle that spans the width or length of the mold and deposits said condiment pieces as said mold is conveyed beneath said ejection nozzle.*”

The Examiner states in the rejection of claim 53 “*...Forkner, however, is silent to a hopper/ejection apparatus for depositing condiment pieces into the mold as recited in claim 53.*” The Examiner further states, “*It would have been further obvious...to use an ejection nozzle that spanned the length of width of the mold in order for the mold to be filled completely in one pass of the ejection nozzle. The selection of an appropriate nozzle configuration to carry out the injection is a result effective variable that is well within the determination of one skilled in the art. It would have been obvious to select nozzle that would give the most optimum filling and optimization is within the skill of one in the art.*”

In response, the Forkner reference does not use, suggest, or lend itself to teachings for using a hopper/ejection nozzle apparatus. Further, Forkner does not disclose a large scale or continuous operations that would benefit from the inclusion of a hopper/ejection apparatus. It would **not have** been obvious to modify Forkner because the teachings of Forkner do not lend the methods of Forkner to the use of a hopper/ejection nozzle apparatus. The Examiner has simply dismissed the claim limitation as obvious.

Additionally, the Examiner has failed to address the claim limitation of “*...said mold is conveyed beneath said ejection nozzle.*” Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to this limitation in claim 53. *Accordingly, the Office Action is incomplete and a new non-final Office action addressing all of the claim limitations is hereby requested.* Otherwise, it is believed that the claim limitation is allowable.

With respect to claim 53 and the limitation of *said mold is conveyed beneath said ejection nozzle,* Applicant submits that Forkner does not disclose a large scale or continuous operations that would benefit from the inclusion of a mold conveying operation.

The Forkner reference simply does not disclose or suggest using a hopper/ejection apparatus for ejection nozzle that spans the width or length of the mold and deposits said condiment pieces as said mold is conveyed beneath said ejection nozzle. The Examiner is hereby requested to provide a reference that supports the well-known and obvious statements or withdraw the rejection.

- Specifically regarding the rejection of claim 54:

Claim 54 recites: “*wherein said hopper/ejection apparatus comprises a laterally moving ejection nozzle that deposits said condiment pieces into said mold using a full length or full width distribution as said mold is conveyed beneath said ejection nozzle.*”

The Examiner states in the rejection of claim 54 “...Forkner, however, is silent to...the hopper/ejection apparatus comprises a laterally moving ejection nozzle which has full length or width mold distribution as recited in claim 54.”

The Examiner further states, “It would have been further obvious...to use an ejection nozzle that moved laterally to deposit edible materials in the molds in the process as taught by Forkner in order to automate the process, thus increasing the operational efficiency...The selection of an appropriate nozzle configuration to carry out the injection is a result effective variable that is well within the determination of one skilled in the art. It would have been obvious to select nozzle that would give the most optimum filling and optimization is within the skill of one in the art.”

In response, the Forkner reference does not use, suggest, or lend itself to teachings for using a hopper/ejection nozzle apparatus or a laterally moving nozzle. Further, Forkner does not disclose a large scale or continuous operations that would benefit from the inclusion of a hopper/ejection apparatus. It would **not have** been obvious to modify Forkner because the teachings of Forkner do not lend the methods of Forkner to the use of a hopper/ejection nozzle apparatus using a laterally moving nozzle. The Examiner has simply dismissed the claim limitations as obvious.

Additionally, the Examiner has failed to address the claim limitation of “*...said mold is conveyed beneath said ejection nozzle.*” Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to this limitation in claim 54. Accordingly, the Office Action is incomplete and a new non-final Office action addressing all of the claim limitations is hereby requested. Otherwise, it is believed that the claim limitation is allowable.

With respect to claim 54 and the limitation of *said mold is conveyed beneath said ejection nozzle*, Applicant submits that Forkner does not disclose a

large scale or continuous operations that would benefit from the inclusion of a mold conveying operation.

The Forkner reference simply does not disclose or suggest using a hopper/ejection apparatus with a laterally moving ejection nozzle that deposits said condiment pieces into said mold using a full length or full width distribution as said mold is conveyed beneath said ejection nozzle. The Examiner is hereby requested to provide a reference that supports the well-known and obvious statements or withdraw the rejection.

- *Specifically regarding the rejection of claim 55:*

Claim 55 recites: “*wherein said condiment pieces are formed from a single condiment sheet, a face-fused condiment sheet, a side-fused condiment sheet, a face-fused-side-fused condiment sheet, a chopped condiment sheet, a woven condiment sheet, and combinations thereof.*”

The limitations of claim 55 must be read in combination with the limitations of claims 30 and 52, from which claim 55 depends. Forkner does not teach the limitations of claim 52, which requires a **hopper/ejection apparatus**. Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to claim 52 and the use of a **hopper**. Accordingly, the Office Action is incomplete and a new non-final Office action addressing all of the limitations of claim 55, which depends from claims 30 and 52, is hereby requested. Since the rejection under 35 USC 103 for claim 55 has not been met as discussed above, the Examiner is requested to withdraw this rejection.

- *Specifically regarding the rejection of claim 56:*

Claim 56 recites: “*wherein said condiment pieces are formed from extruded condiment that is divided into said condiment pieces and fed to said hopper/ejection apparatus.*”

The Examiner states in the rejection of claim 56 “...Forkner, however, is silent to the extruded material as placed in a cutting or slice forming mold as recited in claim 56.” The Examiner further states, “Forkner teaches that condiment strips may be formed by extruding and then cutting the extruded

condiment strips to form the desired size. It would have been obvious...to include a mold with the cutting device in order to assist in easily forming or cutting the extruded condiment piece to the desired size” In response, first there is no limitation drawn to placing extruded material into a cutting or slice forming mold, as eluded to by the Examiner in the rejection. The claim requires that “**extruded condiment is divided into condiment pieces and fed to said hopper/ejection apparatus.**” Second, the Examiner states that Forkner is silent to the extruded material and then states Forkner teaches condiment strips may be formed by extruding. It is unclear as to where the Examiner stands with regard to Forkner teaching or not teaching extruding. The fact is that the Forkner reference fails to disclose, teach, or suggest extruding. Nowhere in the reference is the word extruding even mentioned. Applicant’s claim 56 recites *wherein said condiment pieces are formed from extruded condiment that is divided into said condiment pieces and fed to said hopper/ejection apparatus.* The Examiner has simply dismissed the claim limitation as obvious.

Also, the Forkner reference fails to teach a hopper/ejection apparatus. In response, the Forkner reference does not use, suggest, or lend itself to teachings for using a hopper/ejection nozzle apparatus. Further, Forkner does not disclose a large scale or continuous operations that would benefit from the inclusion of a hopper/ejection apparatus. It would *not have* been obvious to modify Forkner because the teachings of Forkner do not lend the methods of Forkner to the use of a hopper/ejection nozzle apparatus. Also, the rejection did not provide a discussion or obvious statement describing the conclusions of the Examiner with respect to claim 52 and the use of a hopper. Accordingly, the Office Action is incomplete and a new non-final Office action addressing all of the limitations of claim 52 is hereby requested.

There is no teaching of extrusion or of extruded condiment that is divided into condiment pieces and fed to the hopper/ejection apparatus. The hopper/ejection apparatus deposits the condiment pieces into a mold. The food condiment pieces are ejected into the mold by way of the hopper/ejection apparatus and then molded to form a food condiment structure. The Forkner reference does not suggest or teach these limitations. The Examiner has misrepresented and misconstrued the teachings of Forkner under 35 USC § 103

and is hereby requested to provide a reference that supports the well-known statement and obvious statements or withdraw this rejection.

8. Claim 47 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Forkner, Patent No. 4,068,007 in view of Jordan 3,848,757.

• Specifically regarding the rejection of claim 47:

Claim 47 recites: “*wherein said cutting tool is provided with vacuum to attach, hold, and carry the condiment slice.*”

The Examiner rejects claim 47 as being obvious over Forkner in view of Jordan by stating “*Forkner...is silent to the cutting tool as provided with a vacuum attachment for moving the condiment slice as recited in claim 47*” The Examiner also states “*Jordan teaches of an automated process of flexible sheets of material, such as cheese slices, in which the sheet is moved and sorted with a vacuum attachment...*” The Examiner also states “*It would have been obvious...to include a vacuum attachment on the cutting tool in the process as taught by Forkner so that the cut structure could be moved in an automated manner after being cut...*” In response, what Jordan actually teaches attaching food slices to a vacuum conveyor for the purpose of feeding the slices to a stacking surface for packaging. The method described by Jordan at Column 1, lines 14-26 “*forming stacks of flexible food slices comprising feeding a series of flexible food slices in turn to the underside of a moving air permeable conveyor, attaching each slice...to the underside of the conveyor by vacuum, conveying to a position over a stacking support, stopping said conveyor...releasing the vacuum and...said slice to...form a stack...*” Accordingly, Jordan does not feed food slices to a molding operation, but rather, to a stacking and packaging operation. At column 1, lines 39-42, Jordan discloses, “*...each slice is weighed before being attached to the conveyor...*” Accordingly, there is a weighing operation for the slices prior to the slices being attached to the conveyor. At Column 3, lines 65-67, Jordan discloses “*The slices 40 fall from a cutting operation...on to a weighing conveyor comprising a conveyor belt 2...*” Accordingly, the cutting operation in Jordan occurs prior to any of the operations described in the inventive process of Jordan. That is, there is no association or teaching of a cutting tool having a vacuum. It is also noted that

the vacuum conveyor is not positioned with or even directly after the cutting of the food slices in Jordan. That is, after the cutting operation in Jordan, the food slices fall onto a weighing conveyor. Further, the vacuum conveyor in Jordan is not a cutting tool. Additionally, neither Jordan nor Forkner teaches, “**removing the condiment slice from said at least one condiment sheet using said cutting tool;**” as recited in claim 46, from which claim 47 depends. The combination of claim 46 and 47 require the cutting tool to be equipped with a vacuum to perform the functions of attaching, holding, and carrying the condiment slice following the cutting step. The combination of Forkner and Jordan simply do not teach this limitation. Additionally, the combination of claims 46 and 47 require the cutting tool that is carrying the condiment slice mate with a mold section. The combination of Forkner and Jordan simply do not teach this limitation. Next, the combination of claims 46 and 47 require that the condiment slice being held and carried by vacuum be positioned in the mold section that is mated with the cutting tool. The combination of Forkner and Jordan simply do not teach this limitation. Further, the combination of claims 46 and 47 require that the periphery of the condiment slice be heated. The combination of Forkner and Jordan simply do not teach this limitation.

The Examiner has misrepresented and misconstrued the teachings of Forkner in view of Jordan under 35 USC § 103 and is hereby requested to provide a reference that supports the well-known statement and obvious statements or withdraw this rejection.

9. Claims 52-55 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Bogdan, Patent No. 5,855,939.

• Specifically regarding the rejection of claim 52:

Claim 52 recites: “*wherein said condiment is in the form of condiment pieces and said depositing step comprises providing a hopper/ejection apparatus for depositing said condiment pieces into said mold.*”

The Examiner rejects claim 52 as being obvious over Bogdan by stating “...the use of injection nozzle for filling was known in the art; this is commonly

done in injection filling into donut, injecting confection into mold etc..." In response, Applicant is not injecting filling into donuts or confection into molds.

Nowhere does the Examiner address the limitation of claim 52 that the food condiment "is in the form of condiment pieces and said depositing step comprises providing a hopper/ejection apparatus for depositing said condiment pieces into said mold." Applicant's hopper/ejection apparatus is for depositing condiment pieces into a mold. The food condiment pieces are then molded to form a food condiment structure. The Bogdan reference does not do, suggest, or teach this limitation. Bogdan does not teach ejecting food condiment pieces into a mold and molding the food condiment pieces to form a food condiment structure. It is also noted that Claim 52 further limits claim 30 and must be read in combination with independent claim 30. The Examiner simply dismisses the limitations as well known and obvious.

The Examiner also states "The selection of an appropriate nozzle configuration to carry out the injection is a result effective variable that is well within the determination of one skilled in the art. It would have been obvious to select nozzle that would give the most optimum filling and optimization is within the skill of one in the art." In response, the Bogdan reference does not use, suggest, or lend its teachings to the use of a hopper/ejection nozzle apparatus. Bogdan does not disclose large scale or continuous operations. Bogdan teaches a preferred apparatus and method at column 4, lines 21-29, which includes a first mold and second mold. Bogdan states, "Molten jelly is poured into the first mold..." Molten jelly does not constitute depositing food condiment pieces into a mold or use of a hopper/ejection apparatus. Bogdan refers to pouring as the method of deposition into a mold. It would not have been obvious to modify Bogdan because the teachings of Bogdan do not lend Bogdan to the use of condiment pieces or to the use of a hopper/ejection nozzle apparatus. Bogdan simply pours onto a mold. There is no need for a hopper/ejection nozzle apparatus. The Examiner cannot read limitations into a reference in order to reject a claim. Bogdan liquefies material prior to pouring into a mold. Injecting pieces of food condiment into the molds of Bogdan would require Bogdan to then liquefy the food condiment pieces. This is not taught or

suggested by Bogdan and suggesting this destroys the teachings and method of the Bogdan reference. The Examiner is requested to withdraw this rejection.

The rejection does not meet the requirement of 35 USC 103 because the subject matter in the claims has not been shown to be obvious. Merely dismissing the claim limitations as well known and obvious is not sufficient reasoning. The Examiner is hereby requested to provide support for the well-known and obvious statements or withdraw the rejection.

- *Specifically regarding the rejection of claim 53:*

Claim 53 recites: “*wherein said hopper/ejection apparatus comprises an ejection nozzle that spans the width or length of the mold and deposits said condiment pieces as said mold is conveyed beneath said ejection nozzle.*”

The Examiner rejects claim 53 as being obvious over Bogdan by stating “*The selection of an appropriate nozzle configuration to carry out the injection is a result effective variable that is well within the determination of one skilled in the art. It would have been obvious to select nozzle that would give the most optimum filling and optimization is within the skill of one in the art.*” In response, the Bogdan reference does not use, suggest, or lend itself to teachings for using a hopper/ejection nozzle apparatus. Further, Bogdan does not disclose large scale or continuous operations that would benefit from the inclusion of a hopper/ejection apparatus. Bogdan teaches a preferred apparatus and method at column 4, lines 21-29, which includes a first mold and second mold. Bogdan states, “*Molten jelly is poured into the first mold...*” Molten jelly does not constitute depositing food condiment pieces into a mold or the use of a hopper/ejection apparatus. Bogdan refers to pouring as the method of deposition into a mold. Additionally, “**pouring**” does not constitute a “**hopper/ejection apparatus**” for depositing condiment pieces into a mold. It would *not have* been obvious to modify Bogdan because the teachings of Bogdan do not lend Bogdan to the use of condiment pieces or to the use of a hopper/ejection nozzle apparatus. Bogdan simply pours onto a mold. There is no motivation to modify Bogdan and there is no use for a hopper/ejection nozzle apparatus. The Examiner cannot read limitations into a reference in order to reject a claim. Bogdan liquefies material prior to pouring it into a mold.

Injecting pieces of food condiment into the molds of Bogdan would require Bogdan to then liquefy the food condiment pieces. This is not taught or suggested by Bogdan and suggesting this destroys the teachings and method of the Bogdan reference.

Additionally, the Examiner has failed to address the claim limitation of “*...said mold is conveyed beneath said ejection nozzle.*” Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to this limitation in claim 53. Accordingly, the Office Action is incomplete and a new non-final Office action addressing all of the claim limitations is hereby requested. Otherwise, it is believed that the claim limitation is allowable.

With respect to claim 53 and the limitation of *said mold is conveyed beneath said ejection nozzle*, Applicant submits that Bogdan does not disclose large scale or continuous operations that would benefit from the inclusion of a mold conveying operation.

The rejection does not meet the requirement of 35 USC 103 because the subject matter in the claims has not been shown to be obvious or either the Examiner simply does not address the claim limitations on their merits. Merely dismissing the claim limitations as well known and obvious is not sufficient reasoning. The Examiner is hereby requested to provide support for the well-known and obvious statements or withdraw the rejection.

- Specifically regarding the rejection of claim 54:

Claim 54 recites: “*wherein said hopper/ejection apparatus comprises a laterally moving ejection nozzle that deposits said condiment pieces into said mold using a full length or full width distribution as said mold is conveyed beneath said ejection nozzle.*”

The Examiner states that “Bogdan, however is silent to a hopper/ejection apparatus...comprises a laterally moving ejection nozzle which has full length or width mold distribution...”

The Examiner rejects claim 54 as being obvious over Bogdan by stating “...the use of injection nozzle for filling was known in the art; this was commonly done in injection filling into donut, injecting confection into

mold...The selection of an appropriate nozzle configuration to carry out the injection is a result effective variable that is well within the determination of one skilled in the art. It would have been obvious to select nozzle that would give the most optimum filling and optimization is within the skill of one in the art." In response, the Bogdan reference does not use, suggest, or lend itself to teachings for using a hopper/ejection nozzle apparatus. Further, Bogdan does not disclose large scale or continuous operations that would benefit from the inclusion of a hopper/ejection apparatus. Bogdan teaches a preferred apparatus and method at column 4, lines 21-29, which includes a first mold and second mold. Bogdan states, "Molten jelly is poured into the first mold..." Molten jelly does not constitute depositing food condiment pieces into a mold or use of a hopper/ejection apparatus. Bogdan refers to pouring as the method of deposition into a mold. Additionally, "**pouring**" does not constitute a "**hopper/ejection apparatus**" for depositing condiment pieces into a mold. It **would not** have been obvious to modify Bogdan because the teachings of Bogdan do not lend Bogdan to the use of condiment pieces or to the use of a hopper/ejection nozzle apparatus. Bogdan simply pours onto a mold. There is no motivation to modify Bogdan and there is no use for a hopper/ejection nozzle apparatus. The Examiner cannot read limitations into a reference in order to reject a claim. Note that Bogdan liquefies material prior to pouring it into a mold. Injecting pieces of food condiment into the molds of Bogdan would require Bogdan to then liquefy the food condiment pieces. This is not taught or suggested by Bogdan and suggesting this destroys the teachings and method of the Bogdan reference.

Additionally, the Examiner has failed to address the claim limitation of "...said mold is conveyed beneath said ejection nozzle." Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to this limitation in claim 54. Accordingly, the Office Action is incomplete and a new non-final Office action addressing all of the claim limitations is hereby requested. Otherwise, it is believed that the claim limitation is allowable.

With respect to claim 54 and the limitation of said mold is conveyed beneath said ejection nozzle, Applicant submits that Bogdan does not disclose

large scale or continuous operations that would benefit from the inclusion of a mold conveying operation.

The rejection does not meet the requirement of 35 USC 103 because the subject matter in the claims has not been shown to be obvious or either the Examiner simply does not address the claim limitations on their merits. Merely dismissing the claim limitations as well known and obvious is not sufficient reasoning. The Examiner is hereby requested to provide support for the well-known and obvious statements or withdraw the rejection.

- **Specifically regarding the rejection of claim 55:**

Nowhere does the Examiner address the limitation of claim 55 that “*said food condiment pieces are formed from a single condiment sheet, a face-fused condiment sheet, a side-fused condiment sheet, a face-fused-side-fused condiment sheet, a chopped condiment sheet, a woven condiment sheet, and combinations thereof.*”

The limitations of claim 55 must be read in combination with the limitations of claims 30 and 52, from which claim 55 depends. Forkner does not teach the limitations of claim 52, which requires a **hopper/ejection apparatus**. Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to claim 52 and the use of a **hopper**. Accordingly, the Office Action is incomplete and a new non-final Office action addressing all of the limitations of claim 55, which depends from claims 30 and 52, is hereby requested. Since the rejection under 35 USC 103 for claim 55 has not been met as discussed above, the Examiner is requested to withdraw this rejection. Otherwise, it is believed that the claim limitation is allowable.

10. Claim 40 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Bogdan, Patent No. 5,855,939 in view of Luck, Patent No. 3,966,993.

- **Specifically regarding the rejection of claim 40:**

Claim 40 recites: “*A continuous method for forming condiment slices: a) extruding a plurality of continuous condiment sections from a plurality of*

extrusion nozzles, each of said continuous condiment sections having a longitudinal axis and a cross-sectional shape and area; b) abutting longitudinal surface of said plurality of continuous condiment sections with at least one other longitudinal surface of said plurality of continuous condiment sections and fusing the abutting longitudinal surfaces long their longitudinal axes to form a condiment loaf; c) feeding said condiment loaf to a cutting station; d) dividing said continuous fused combination condiment loaf to form condiment slices.”

The Examiner indicates in the rejection: “Bogdan teaches a process for forming condiment slices...however is silent to a continuous method for forming condiment slices comprising: extruding a plurality of condiment sections from a plurality of extrusion nozzles, fusing the surfaces together to form a condiment loaf, and cutting the condiment loaf to form condiment slices...” It is noted that Bogdan does not teach any of the steps of claim 40. The Examiner applies Luck to modify Bogdan and indicates, “Luck teaches that the ingredients in the condiment structure are combined and then molded into a final strip product.”

In response, it is first noted that Luck never recites the terms “condiment structure” and “strip product” as the Examiner asserts. What Luck actually describes is a process for forming a solid sauce bar product (see Abstract; Column 1, lines 4-8). The Examiner further states, “Luck teaches that extruding or flaking and compressing may also be used in the place of molding to form the condiment structure.” Again, it is noted that Luck never recites the term “condiment structure.” What Luck actually discloses “...can extrude the mush without reheating to form a bar or rod...but for compactness, ease of handling, and ease of packaging, I prefer casting it to form a bar.” Accordingly, Luck teaches that a bar or rod can be extruded for the purpose of avoiding reheating of the mixture. The Examiner then states, “Regarding producing the condiment strips in a continuous method, continuous processing and batch processing are well known concept in the art. It would have been obvious...to have the batch process taught by Bogdan continuous in order to increase efficiency of the process in the absence of new or unexpected results.” In response, the Examiner cannot only modify Bogdan. The Examiner must modify Bogdan in view of Luck. Note that neither reference teaches a

continuous process. Both Bogdan and Luck teach batch processes. Bogdan only teaches casting into a mold and discloses at column 4, lines 21-29 "Figs 2-5 depict a preferred apparatus for forming a peanut butter and jelly slice 10 of the present invention." The preferred apparatus is shown as an open mold that allows molten material to be poured into the mold. Accordingly, the preferred method in Bogdan is pouring into a mold and the preferred apparatus in Bogdan is the depicted mold. Further, Bogdan only teaches pouring, and the molten consistency of the materials taught by Bogdan would not allow for their use in an extrusion process. Molten materials are not extruded. Therefore, it would not have been obvious to modify Bogdan, as the Examiner suggests, because Bogdan's chosen method is to pour into a mold and, therefore, the Bogdan method is not open to modification. It is also essential for Bogdan to pour material because of the encapsulated shape for the final product (see Column 4, lines 53-63). Bogdan desires a simple straightforward molding method – not a continuous extrusion method, as claimed by Applicant.

Luck teaches preference to casting for the advantages of compactness, ease of handling, and ease of packaging, as discussed above. Accordingly, it would not have been obvious or prudent to eliminate these advantages, as taught by Luck, from the method of Bogdan, by introducing extrusion – especially since Bogdan teaches away from using other methods. Note that Bogdan also desires to package the final product. It is also noted that Luck teaches at Column 3, lines 28-32, "The bar package can be permeable to atmospheric moisture..." Bogdan teaches at Column 5, lines 9-11, "The food slice 10 is then sealingly wrapped in a flexible covering 29..." Accordingly, it is the desire of Bogdan to seal the product package, while Luck allows the packaging to be permeable. Thus, Bogdan teaches away from packaging that would be detrimental to the final product. Accordingly, the two references diverge on the type of packaging that may be used and, therefore, jointly teach away from their combination.

The Examiner also states: "Regarding extruding a plurality of condiment sections from a plurality of extrusion nozzles, Bogdan teaches forming a plurality of condiment sections by molding. Luke teaches that the condiment sections can be extruded...it would have been obvious...to substitute one art

recognized functional equivalent (i.e. extruding multiple strips) for another (i.e. molding multiple strips) in the process of forming a condiment strip as disclosed by Bogdan, depending on which equipment were more available and affordable... ”

Again, it is noted that Luck never recites the terms “condiment sections” or “extruding multiple strips” or “molding multiple strips” or “condiment strip.” Additionally, the Examiner never advances any reason of obviousness for using a plurality of extrusion nozzles. The Examiner’s makes the statement “Regarding extruding a plurality of condiment sections... ” However, this is not what Applicant has claimed. Applicant claims, “extruding a plurality of continuous condiment sections... ” The term “continuous” has meaning and cannot simply be disregarded. Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to claim 40 and the method step of *extruding continuous condiment sections*. Accordingly, the Office Action is incomplete and a new non-final Office action addressing all of the limitations of claim 40 is hereby requested. Since the rejection under 35 USC 103 for claim 40 has not been met as discussed above, the Examiner is requested to withdraw this rejection. Otherwise, it is believed that the claim limitation is allowable.

For the Examiner to proclaim that it would have been obvious to substitute the equipment used by Bogdan with other equipment based merely on availability and affordability removes entirely the inventive process from Bogdan. As indicated previously Bogdan only teaches pouring, and the molten liquid consistency of the materials taught by Bogdan would not allow for their use in an extrusion process. Molten liquid materials are not extruded. Therefore, it would not have been obvious to modify Bogdan, as the Examiner suggests, because Bogdan’s chosen method is to pour into a mold and, therefore, these are not art recognized equivalents, as advanced by the Examiner. The Bogdan method is not open to modification.

The Examiner also states: “Regarding fusing the surfaces together to form a condiment loaf, and cutting the condiment loaf to form condiment slices, Bogdan teaches that it is desirable to form condiment slices and then combine them together; Bogdan teaches, when desired, loafs of condiment, including a

loaf of jelly, peanut butter, and jelly is formed. It would have been obvious...to fuse the condiment loaf as taught by Bogdan together so that when applying the condiment to a sandwich or other food product the condiment remained intact and together. It would have been further obvious...to slice to the size of the bread for which the condiment slice was to be placed on.”

In response, Bogdan does not form loafs of condiment and does not teach a loaf of jelly, peanut butter, and jelly. The method of Bogdan is to form a combination food slice. At column 4, lines 17-19, Bogdan describes, “Preferably, however, the peanut butter and jelly slice 10 is sized to fit onto a slice of bread (about 3.5” wide by 4.0” long and is about 3/8” thick.” Also Bogdan discloses at column 4, lines 21-29, “Figs 2-5 depict a preferred apparatus for forming a peanut butter and jelly slice 10 of the present invention.” The preferred apparatus is shown as a sandwich-sized open mold that allows molten material to be poured into the mold. Accordingly, the preferred method in Bogdan is pouring into a mold having the dimensions of the slice and the preferred apparatus in Bogdan is the depicted mold. Bogdan does not teach, disclose, or suggest forming a condiment loaf. Accordingly, the Examiner has misrepresented the teachings of Bogdan under 35 USC § 103 and is requested to withdraw this rejection. Also, in response to the Examiner’s statement, “It would have been obvious...to fuse the condiment loaf as taught by Bogdan...” First, Bogdan does not teach a condiment loaf or fusing a condiment loaf, as discussed above. Second, Applicant’s claim recites, “...abutting longitudinal surface of said plurality of continuous condiment sections with at least one other longitudinal surface of said plurality of continuous condiment sections and fusing the abutting longitudinal surfaces long their longitudinal axes to form a condiment loaf...” Note that continuous condiment sections are formed **individually** through extrusion, then abutted and fused along their longitudinal axes to form a condiment loaf. Bogdan does not form intact condiment slices and then abut and fuse them. Neither Bogdan nor Luck teaches this step or any other step in the claim.

The Examiner also states: “It would have been further obvious...to slice the condiment loaf into condiment slices in order to tailor the condiment slice to the size of the bread...” In response, Bogdan does not disclose a loaf for which

to slice. Also, as conveyed previously, Bogdan forms the slices using a mold having the desired dimensions of the food slice. At column 5, lines 5-6, Bogdan discloses: "The resultant peanut butter and jelly slice 10 is then removed from the second mold 18 and packaged." Thus, it is the objective of Bogdan to form the food slice, remove it from the mold, and then package the food slice. Accordingly, it would not have been obvious to introduce a cutting step in the method of Bogdan because: 1) Bogdan does not produce a food slice that requires cutting; 2) Bogdan does not form or mold a loaf that would require cutting; 3) Bogdan does not extrude continuous condiment sections; 4) Bogdan teaches forming the food slice in a mold, removing it from the mold, and packaging. No cutting step is warranted. The Examiner has completely disregarded the teachings of Bogdan and is implying that the reference communicates a teaching that is entirely absent.

It appears that Luck is being combined with Bogdan because Luck mentions extruding a bar. What Luck actually discloses "...can extrude the mush without reheating to form a bar or rod...but for compactness, ease of handling, and ease of packaging, I prefer casting it to form a bar." Accordingly, Luck teaches that the bar or rod can be extruded for the purpose of avoiding reheating of the mixture. It is noted that the sauce bar of luck is not intended for "sandwich making" as desired by Bogdan. Luck teaches "My sauce bars are manufactured for ready conversion in aqueous liquid to appetizing sauces and gravies...reconstitution of the bar in these liquids can be achieved...by warming the liquid...and by agitation of the sauce bar-liquid dispersion..." Accordingly, it is not the goal of Luck to form food slices for sandwiches. Applicant's claim recites, "...abutting longitudinal surface of said plurality of continuous condiment sections with at least one other longitudinal surface of said plurality of continuous condiment sections and fusing the abutting longitudinal surfaces long their longitudinal axes to form a condiment loaf..." Note that continuous condiment sections are formed individually through extrusion, then abutted and fused along their longitudinal axes to form a condiment loaf. Luck does not teach, disclose, or suggest forming a condiment loaf formed from a plurality of continuous individual condiment sections. Neither Bogdan nor Luck teaches this step or any other

step in the claim. At column 4, lines 67-68, Luck discloses: "*It was easily packaged by wrapping with sheet material and stacked on a shelf for storage.*" Thus, it is the objective of Luck to form the sauce bar, remove it from the mold after casting, and then package the sauce bar. Accordingly, it would not have been obvious to introduce a cutting step in the method of Luck because 1) Luck does not produce a sauce bar that requires cutting; 2) Luck does not form or mold a continuous loaf that would require cutting; 3) Luck does not extrude continuous condiment sections, nor a plurality of continuous condiment sections; 4) Luck teaches forming the sauce bar in a mold, removing it from the mold, and packaging. No cutting step is warranted. The Examiner has completely disregarded the teachings of Luck and is implying that the reference communicates a teaching that is entirely absent.

The Examiner has dismissed the entire claim as being well known and obvious and, also, indicates that Bogdan and Luck teach and use terminology that simply does not exist and clearly is not supported.

The rejection does not meet the requirement of 35 USC 103 because the subject matter in the claims has not been shown to be obvious or either the Examiner simply does not address the claim limitations on their merits. Merely dismissing the claim limitations as well known and obvious is not sufficient reasoning. The Examiner is hereby requested to provide support for the well-known and obvious statements or withdraw the rejection.

11. Claims 37 and 43-45 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Alden, Patent No. 5,894,028.

• Specifically regarding the rejection of claim 37:

Claim 37 recites: "*wherein said step of joining comprises positioning said condiment sections in a first mold section such that said surfaces are in an abutting relationship forming a fusion line adjacent a first heating/cooling plate; mating a second mold section having a second heating/cooling plate with said first mold section such that said fusion line is adjacent said second heating/cooling plate; heating said first and second heating/cooling plate to cause said abutting condiment sections to flow and fuse together along said fusion line.*"

The Examiner states that "Alden teaches of a method for forming condiment slices from condiment strips, however, is silent to two condiment sections each placed in molds with heating plates which fuse and heat together the condiment sections..." The Examiner rejects claim 37 as being obvious over Alden by stating "It would have been obvious...to use a mold with heating plates which fuse the material inside into one in order to combine the steps of fusing and molding..."

In response, Applicant's claim does not recite "two condiment sections each placed in molds" as the Examiner contends. Additionally, Alden does not teach, discuss, or suggest a method of forming condiment slices. Alden teaches **a method of forming pizza sauce disks** (see Alden reference). Nowhere in the Alden reference is there a discussion of forming condiment slices. Further, Alden does not recite, as the Examiner notes, the limitation of "*positioning condiment sections in a first mold section such that said surfaces are in an abutting relationship forming a fusion line adjacent a first heating/cooling plate; mating a second mold section having a second heating/cooling plate with said first mold section such that said fusion line is adjacent said second heating/cooling plate; heating said first and second heating/cooling plate to cause said abutting condiment sections to flow and fuse together along said fusion line.*" Nowhere does Alden teach any of these claimed limitations. Note there is claimed two mold sections, two heating/cooling plates, a fusion line formed by the adjacent food condiment sections, and a fusion line adjacent both of the first and second heating/cooling plates. The reason for two heating/cooling plates is the need to heat the fusion line, formed by the abutment of the food condiment sections, on all sides; and to maintain the original shape and form of the food condiment sections.

It is further noted that it would not have been obvious to have modified Alden to use a mold with heating plates because: 1) Alden's methods do not lend nor require the use of multiple molds sections with heating plates; 2) Alden teaches forming surfaces such as support sheet 16, conveyor belt 24 or pans. Alden teaches that the support sheets 16 are constructed of silicon-coated baker's type paper (see column 4, lines 27-38). It is not the intention of Alden to use silicon-coated paper as a heating plate. Rather, it is the intention of

Alden to use support sheet 16, along with cover sheet 18, as packaging materials for storage, packaging, and shipment of the pizza disks following their manufacture (see column 3, line 63 through column 4, line 6; column 5, lines 35-49, column 6, lines 2-7 and 8-20; column 7, lines 35-41; column 8, lines 17-25 and 58-67). The heating/cooling plates claimed by Applicant do not function as storage, packaging and shipping materials. Accordingly, one of ordinary skill would not substitute the support sheet 16 of Alden with heating/cooling plates because such a modification would destroy the teachings and intent of Alden to use the support sheet 16 as the combination of forming surface, storage, packaging, and shipping material.

It is also noted that Claim 37 further limits claim 21 and must be read in combination with independent claim 21. Alden does not show or teach the limitations of claim 21, from which claim 37 depends. Specifically, Alden does not teach: “*a) forming condiment sheets; b) dividing said condiment sheets into condiment sections; c) joining surfaces of said condiment sections to form said condiment structure.*” The intention of Alden is to make pizza sauce disks – not to form food condiment sheets, divide the food condiment sheets into sections, and then join the sections by positioning the sections in a first mold section such that surfaces are in an abutting relationship forming a fusion line adjacent both first and second mold sections having heating/cooling plates. In fact, Alden does not disclose, teach, or suggest forming condiment sheets. Note that the claimed limitation requires that the food condiment sheets be formed as part of the process.

The rejection does not meet the requirement of 35 USC 103 because the subject matter in the claims has not been shown to be obvious. Merely dismissing the claim limitations as well known and obvious is not sufficient reasoning. The Examiner is hereby requested to provide support for the well-known and obvious statements or withdraw the rejection.

- *Specifically regarding the rejections of claims 43 and 44:*

Claim 43 recites: “*wherein said woven structure is a woven condiment sheet and said method further comprises performing single successive cuts on said at least one woven condiment sheet to form woven condiment slices; said*

cutting step causing woven peripheral edge portions of said woven condiment slice to bond together to retain said woven form.”

Claim 44 recites: “*wherein said woven structure is a woven condiment sheet and said method further comprises performing a single cutting operation on said woven condiment sheet to simultaneously form a plurality of woven condiment slices, said cutting step causing woven peripheral edge portions of each of the plurality of woven condiment slices to bond together to retain said woven form.*”

The Examiner states that “*Alden teaches forming condiment slices from condiment strips, however, is silent...to cutting the woven condiment structure in one single cutting operation composed of performing single successive cuts, wherein cutting binds together the condiment slices...”*

The Examiner states “*it was known...to cut a pizza in one single cutting operation composed of performing single successive cuts, wherein the cutting binds together the pizza toppings, when the pizza is warm when cut. Alden teaches a woven condiment structure, which comprises the pizza toppings and is to be placed on pizza crust.”*

In response, Alden does not teach, discuss, or suggest a method of forming condiment slices. Alden teaches a method of forming pizza sauce disks (see Alden reference). Nowhere in the Alden reference is there a discussion of forming condiment slices. Additionally, the Examiner indicates, “*performing single successive cuts, wherein cutting binds together the condiment slices...”* It is noted that the claim *does not* recite: cutting binds together the condiment slices. What the claim actually recites is “*said cutting step causing woven peripheral edge portions of said woven condiment slice to bond together to retain said woven form.”* The Alden reference does not recite this claim limitation. Further, Alden does not recite, as the Examiner notes, the limitation of claim 43 “*wherein said woven structure is a woven condiment sheet and said method further comprises performing single successive cuts on said at least one woven condiment sheet to form woven condiment slices; said cutting step causing woven peripheral edge portions of said woven condiment slice to bond together to retain said woven form.”*

Additionally, Alden does not recite, as the Examiner notes, the limitation of claim 44 “*wherein said woven structure is a woven condiment sheet and said method further comprises performing a single cutting operation on said woven condiment sheet to simultaneously form a plurality of woven condiment slices, said cutting step causing woven peripheral edge portions of each of the plurality of woven condiment slices to bond together to retain said woven form.*” Nowhere does Alden teach any of the limitations of claims 43 and 44.

First, **Alden does not disclose a woven condiment sheet, does not disclose woven condiment slices, and does not teach a pizza with woven condiment strips.** The Examiner implying that pizza toppings placed on a pizza crust defines a woven condiment is a serious misrepresentation of the reference. Specifically, Alden does not teach: providing strips and/or strands formed from at least one condiment; interweaving said individual strips and/or strands of said at least one condiment to form said condiment structure. The Alden reference has no similarities to Applicant’s claimed method.

Second, **Alden does not disclose cutting a woven food condiment sheet to form a woven food condiment slice or a plurality of food condiment slices using a single cut.** The weaving of food condiment strips, as claimed by Applicant, are not addressed, disclosed, or recited in the Alden reference. Dispensing or distributing pizza ingredients does not constitute a weaving operation.

Third, **Alden does not disclose cutting a woven condiment sheet.** Alden does not even disclose a woven condiment sheet. The Examiner suggesting that cutting pizza is equivalent to cutting a woven food condiment sheet is unreasonable and unsupported. The rejection does not meet the requirement of 35 USC 103 because the subject matter in the claims has not been shown to be obvious. Merely dismissing the claim limitation as obvious is not sufficient reasoning. The Examiner is requested to provide support for the well-known and obvious statements.

Fourth, **The Applicant’s claim is not drawn to slicing pizza, as stated by the Examiner.**

Fifth, The Examiner states, “*cutting binds together pizza toppings, when the pizza is warm when cut.*” Applicant’s claim is not drawn to cutting pizza. Further, it is unclear how and in what way does cutting bind pizza toppings. This statement is unsupported and has no relationship to Applicant’s claimed method. Applicant is not binding pizza toppings, is not cutting pizza, and does not claim a heating step. It is also noted that it is not the intention of Alden to cut the pizza disk. In fact, it is the intention of Alden to manufacture an intact pizza disk for packaging and shipment to establishments where the pizza sauce disk can be placed on a crust (see column 8, lines 52-57). Alden explains that “*...the pizza sauce disk can be...applied to pizza crust 14...When the pizza order is received, the appropriate disk is selected from storage...because of the gel structure within the pizza sauce 32, the disk can be readily handled and removed from sheets 16 and 18 without tearing the thin edges of the disk 12...and manipulated as desired without tearing, breaking or smearing the sauce.*” Thus, it is the intention of Alden not to cut, break, or tear the pizza sauce disk during the method of manufacture. Accordingly, modifying the Alden process by cutting would destroy the teachings and direct intention of Alden of manufacturing, packaging, and delivering an intact, uncut, un-torn, unbroken, whole pizza disk. The Examiner is attempting to make obvious in Alden the cutting of pizza, as practiced by consumers, outside of the method or operation of forming the pizza disk. *The action of cutting pizza does not apply to the manufacturing process of Alden.* Accordingly, it **would not** have been obvious to modify Alden to cut the pizza disk because Alden specifically teaches away from such a practice. The rejection does not meet the requirement of 35 USC 103 because the subject matter in the claims has not been shown to be obvious. The Examiner is requested to withdraw this rejection.

It is also noted that each of Claims 43 and 44 further limits claim 22 and each must be read in combination with independent claim 22. Alden does not show or teach the limitations of claim 22, from which each of claims 43 and 44 depends.

The rejection does not meet the requirement of 35 USC 103 because the subject matter in the claims has not been shown to be obvious. Merely dismissing the claim limitations as well known and obvious is not sufficient

reasoning. The Examiner is hereby requested to provide support for the well-known and obvious statements or withdraw the rejection.

- Specifically regarding the rejection of claim 45:

Claim 45 recites: “*wherein said method further comprises applying an edible edge sealer to the peripheral edges of said woven condiment structure and applying heat to said edible edge sealer to cause the edible edge sealer to flow into the interstices of the woven condiment strips and/or strands to retain the weaving pattern of the woven condiment structure.*”

The Examiner states that “Alden teaches a woven condiment structure, which comprises the pizza toppings and is to be placed on pizza crust and baked.”

The Examiner has rejected the claim by stating that “it would have been obvious to meet all of these claimed limitations by placing the pizza sauce disk on a pizza crust and baking to cause the pizza crust to rise to form a lip around the edge of the pizza and the condiments inside and this would act as an edible edge sealer.” The rejection states, “...the crust will rise to form a lip around the pizza and condiments inside.”

In response, Alden does not teach, discuss, or suggest a method of forming condiment slices. Alden teaches a method of forming pizza sauce disks (see Alden reference). Nowhere in the Alden reference is there a discussion of forming condiment slices. Alden does not disclose a woven condiment sheet, does not disclose woven condiment slices, and does not teach a pizza with woven condiment strips, does not disclose an edge sealer. The Examiner implying that pizza toppings placed on a pizza crust defines a woven condiment is a serious misrepresentation of the reference. Specifically, Alden does not teach: providing strips and/or strands formed from at least one condiment; interweaving said individual strips and/or strands of said at least one condiment to form said condiment structure. The Alden reference has no similarities to Applicant’s claimed method.

Also, modifying the Alden process by cutting would destroy the teachings and direct intention of Alden of manufacturing, packaging, and delivering an intact, uncut, un-torn, unbroken, whole pizza disk. The Examiner is attempting

to make obvious in Alden the cutting of pizza, as practiced by consumers, outside of the method or operation of forming the pizza disk. The action of cutting pizza does not apply to the manufacturing process of Alden.

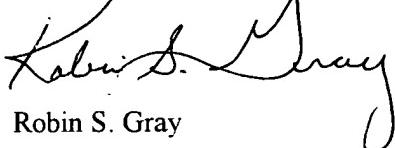
Note that the claimed method limitation requires that the edible edge sealer be applied to the peripheral edges of the woven condiment structure. First, Alden does not teach a woven condiment structure. Second, Alden does not apply an edible edge sealer to the peripheral edges of woven food condiment. Third, there is no teaching in Alden of applying heat to an edible edge sealer to cause the edible edge sealer to flow into the interstices of the woven condiment strips and/or strands to retain the weaving pattern of the woven condiment structure. The condiments of Applicant's woven food condiment structure are not "inside" and do not sit on a base formed of edge sealer. Additionally, the ingredients of pizza are not retained in place by the crust.

Also, the Examiner never addresses the "**flow of the edge sealer into the interstices of the woven food condiment.**" Accordingly, the Office action is incomplete and a new non-final Office action addressing all of the claim limitations is hereby requested.

The rejection does not meet the requirement of 35 USC 103 because the subject matter in the claims has not been shown to be obvious or either the Examiner simply does not address the claim limitations on their merits. Merely dismissing the claim limitations as well known and obvious is not sufficient reasoning. The examiner is hereby requested to provide support for the well-known and obvious statements or withdraw the rejection. Otherwise, it is believed that the claim limitation is allowable.

Applicant respectfully submits that the above arguments place the application for patent in condition for allowance and early notification to that effect is respectfully requested.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited with the United States Postal Service as Post Office To Addressee with Express mail label Number: EB 363114603 US addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria Virginia 22313-1450, on November 8, 2008.

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Applicant

Signature

November 8, 2008

Date of Signature